FILED

001100 NOV 9 2000

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

IN RE: INTERPICTURES INC.,
DEBTOR.

ELIEZER MILLER,

Petitioner,

vs.

GENERALE BANK NEDERLAND, N.V.,
INTERPICTURES INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ELIEZER MILLER
Petitioner Pro Se
455 Foster Avenue
Brooklyn, NY 11230
(718) 438-4776

(9131 – 2000)

Printed on Recycled Paper

139pp

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, on an important matter, — violation and denial of petitioner's constitutional rights to due process of the law — as to call for an exercise of this Court's supervisory power.

2. Whether the United States Court of Appeals has sanctioned such a far departure from the accepted and usual course of judicial proceedings, by the district court, as to call for an exercise of this Court's supervisory power.

3. Whether the United States Court of Appeals' decision entered June 26, 2000, is in conflict with its own prior decision, entered January 24, 1996, on my prior appeal, in this same case. U.S.C.A. #95-5042 In Re: Interpictures, Inc.

4. Whether the United States Court of Appeals' decision entered June 26, 2000 is in conflict with its holdings on the record of the hearing held on the appeal on January 11, 2000.

5. Whether the district and bankruptcy courts have violated and denied my constitutional rights to due process of the law and equal protection of the law and have allowed the presence of a fraud upon the bankruptcy court, — Loeb & Loeb's filing of a false Petition of Involuntary Bankruptcy In Chapter 7, — to go undetected, which is an important matter which only this court can rectify.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CITED AUTHORITIES iii

TABLE OF APPENDICES iv

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 2

CONCLUSION 6

TABLE OF CITED AUTHORITY

CASE: **Page**

Eliezer Miller v. Lee Steiner, Esq., 87-CV-4211 (ERK) EDNY 2

CONSTITUTIONAL AND STATUTORY PROVISION:

The Constitution of the United States of America, Sixth Amendment, Right to Due Process of the Law 1, 2, 3, 4

11 U.S.C. 554(b) 1, 2, 3, 6

INDEX TO APPENDICES

Page

Appendix 1: United States Court of Appeals Order Dated June 26, 2000 ..... 1a

Appendix 2: United States Court of Appeals Summary Order Dated February 3, 2000 ... 10a

Appendix 3: United States District Court Order Dated May 28, 1999 ..... 16a

Appendix 4: United States District Court Memorandum & Order Dated March 9, 2000, Judge Edward R. Korman 17a

Appendix 5: United States Bankruptcy Court Amended Memorandum Opinion Dated January 29, 1999, Judge Stan Bernstein 27a

Appendix 6: United States Court of Appeals Order Dated August 11, 2000, Denying Petition for Rehearing and a Copy of the Petition 40a

Appendix 7: Miller's Notice of Appeal Filed on March 31, 2000, from the District Court Order Dated March 9, 2000 ..... 77a

Appendix 8: Miller's Letter to Clerk of District Court Dated April 3, 2000, Advising that District Court Refused to Accept $105.00 for Filing Fee on March 31, 2000 ..... 80a

Page

Appendix 9: Receipt for $5.00 Filing Fee Accepted on April 3, 2000 ..... 83a

Appendix 10: United States Court of Appeals Summary Order Dated January 24, 1996, on Miller's Original Appeal to the Court of Appeals. Circuit Judges McLaughlin, Jacobs & Calabresi {95-5042} 85a

Appendix 11: Transcript of the Hearing on Appeal Before the Court of Appeals Held on January 11, 2000 ..... 95a

Appendix 12: Miller's Letter Dated December 10, 1986, to the Interim Chapter 7 Trustee, Alleging that Loeb & Loeb Filed a False Petition in Bankruptcy 110a

Appendix 13: United States District Court Order Dated May 11, 1988, Reversing Bankruptcy Judge Holland's Decision and Removing Him from this Case 115a

Appendix 14: Judge Korman's Order that Reversed {2} Two Bankruptcy Court Orders and Vacated Citation for Contempt Against Miller 116a

Appendix 15: Miller's Counsel, Snitow & Pauley Filed an Application on March 7, 1996, for Permission to Prosecute the RICO for the Benefit of the Bankrupt Estate 118a

Page

Appendix 16: Judge Korman's Order Dated September 27, 1996, (i) Removing Bankruptcy Judge Conrad from Miller's Motion and (ii) Directing that the New Judge Determine Whether Miller Met the Standard for Abandonment as Set Out in the Order of the Court of Appeals Dated January 24, 1996 .... 120a

Appendix 17: Judge Conrad's Order Dated November 13, 1996 that He Resign from this Case 122a

Appendix 18: Chief Bankruptcy Judge Duberstein Order Dated November 14, 1996, Assigning this Case to Judge Stan Bernstein 124a

JURISDICTION

The orders of the United States Court of Appeals appears at Appendix 1 and 2 to the petition. The Summary Order dated February 3, 2000 is unpublished and the Order dated June 26, 2000 has been designated for publication but is not yet reported.

The orders of the United States district court dated May 28, 1999, and March 9, 2000 appear at Appendix 3 and 4 to the petition and are unpublished.

The order of the United States bankruptcy court appears at Appendix 5 and is unpublished.

The United States Court of Appeals decided my case by order dated June 26, 2000 and appears at Appendix 1.

A timely petition for rehearing, exhibited in Appendix 6, was denied by the United States Court of Appeals on August 11, 2000 and a copy of the order denying rehearing appears at Appendix 6 to this petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's rights of due process of the law under the Constitution of the United States of America.

11 U.S.C. 554{b} Abandonment of the estates' RICO claims and its other causes of action to petitioner, creditor, Eliezer Miller.

STATEMENT OF THE CASE

On November 6, 1986, Credit Lyonnais Bank Nederland, N.V. predecessor to Generale Bank Nederland, N.V., Respondent herein, (BANK) filed, by counsel Loeb & Loeb, (LOEB) a Petition of Involuntary Bankruptcy in Chapter 7, against Interpictures, Inc., a public company, in which Miller was a 28.4% shareholder. By letter dated December 10, 1986, which Miller filed in Bankruptcy Court, he alleged that the Petition was false and was intended to defraud Miller of his equity interest in Interpictures. In December 1986 the bankruptcy case was converted to Chapter 11 and Interpictures' wholly-owned subsidiaries Interpictures Licensing Corp. and Interpictures Releasing Corp., each, filed a Petition of Voluntary Bankruptcy in Chapter 11. On March 24, 1987, based on allegations of fraud by Miller, the bankruptcy court appointed Edward P. Frey, Esq. as the operating trustee. When Mr. Frey refused to file suit against LOEB and the BANK, Miller commenced a civil RICO action, Eliezer Miller v. Lee Steiner, Esq., 87-CV-4211 (ERK) EDNY. With the court's permission, Miller, by counsel Snitow & Pauley, amended the RICO and sought to prosecute it for the benefit of the estate. Motion was denied. Miller then moved for abandonment to himself as a creditor, under 11 U.S.C. 554(b). This Petition is from the second circuit's affirmance of the district court's affirmance of the bankruptcy court's denial of abandonment to Miller.

REASONS FOR GRANTING THE PETITION

The United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and has denied appellant his constitutional rights to due process of the law and equal protection of the law, by its following acts; (i) did not rule on appellant's

appeal, taken from the district court's May 28, 1999 order, that affirmed the bankruptcy court order dated January 29, 1999 which denied abandonment to Miller. U.S.C.A. Case #99-5055; {ii} affirmed the district court's unlawful order, issued *sua sponte*, on March 9, 2000, while the district court lacked jurisdiction to do so. While the appellant's appeal was pending before the court of appeals, the district court, again, affirmed; by making new findings and on entirely new legal grounds; — for lack of "possessory interest"; — the order of the bankruptcy court that denied appellant's motion, for an order under 11 U.S.C. 554{b}, to abandon to appellant the estates' RICO causes of action, against LOEB and the BANK among others; {iii} denied appellant, his request and his due process right for oral argument before the court of appeals, on appellant's appeal filed March 31, 2000, from the March 9, 2000 order, to which the court of appeals did not even assign a case # and did not issue any Briefing Scheduling Order; as to call for an exercise of this Court's supervisory power.

The United States Court of Appeals has sanctioned the district court's so far departure from the accepted and usual course of judicial proceedings, and has sanctioned the district court's denial of appellant's constitutional rights to due process of the law and equal protection of the law, as follows; {i} sanctioned the district court's denial of appellant's request and due process right to a Hearing on his appeal, 99 CV 0533{ERK}, from the bankruptcy court order dated January 29, 1999, {ii} sanctioned the district court's sanctioning the bankruptcy court's refusal to carry out the district court's directive in order dated September 27, 1996 which referred, to the bankruptcy court, appellant's motion, "seeking to have the RICO causes of action in the above-captioned case abandoned to him", and directed it to determine whether appellant "complied with the standard {for abandonment} set out in the Summary

Order of the Court of Appeals dated January 24, 1996, pp. 6-7", issued on appellant's prior appeal to the Court of Appeals. U.S.C.A. Case #95-5042, {iii} sanctioned the district court's sanctioning of the bankruptcy court's denial of appellant's request and right to a Hearing on his motion for abandonment, under 11 U.S.C. 554{b}, {iv} sanctioned the district court's unlawful order issued, March 9, 2000, which withdrew its order, dated May 28, 1999, while it lacked jurisdiction to do so, after it was already appealed, briefed and argued, on January 11, 2000, before the court of appeals, {v} sanctioned and affirmed the district court's unlawful and *sua sponte* order issued March 9, 2000, while the district court lacked jurisdiction to again affirm the order of the bankruptcy court, dated January 29, 1999, on the new findings and new legal grounds, made by the district court, during the pendency of the appeal before the court of appeals, {vi} sanctioned and affirmed the district court's *sua sponte* order issued without any Hearing on March 9, 2000, which affirmed the bankruptcy court, {vii} sanctioned the district court's sanctioning of the bankruptcy court's {a} disallowance of any 2004 depositions to be taken, {b} and its continuous quashing, *sua sponte*, of each and every subpoena for testimony obtained by Miller, and {c} refusal to conduct any Hearing; of any party; including Michael P. Zweig, Esq., general partner of Loeb & Loeb, who signed the Bankruptcy Petition; to prove that Loeb & Loeb filed a false Petition of Involuntary Bankruptcy In Chapter 7, which fraudulently induced the bankruptcy of Interpictures, Inc. This constitutes a clear violation of petitioner's constitutional right to due process of the law and allows the presence of a fraud upon the bankruptcy court to go undetected. This calls for an exercise of this Court's supervisory power, being an important matter that only this Court can rectify.

The United States Court of Appeals' decision entered June 26, 2000, is in conflict with its own prior holding, in its Summary Order entered January 24, 1996, p 6, on appellant's prior appeal, U.S.C.A. #95-5042, that

> "Clearly, a trustee 'may not simply do nothing and thereby permit a possibly valid claim to evaporate and a defendant to escape liability... If this cause of action is meritless — and therefore worthless — the bankruptcy court is obliged to order it abandoned".

The United States Court of Appeals' June 26, 2000, order, holding that the district court did not abuse its discretion, is in conflict with its own holding on the record of the Hearing on the present appeal held before the U.S.C.A. on January 11, 2000, p 5, which reads

> JUDGE CALABRESI: But there were a whole series of different conditions, for example, the determination of a value and so on, and as these get met, other conditions get suggested. And behind it there is a generalized suggestion that Mr. Miller is a pain and that he should not get the suit because he is a pain. But is not as far as I know, the law, unless there are at least some pretty specific findings of improprieties or other things. And all of those seem to have been dismissed.

CONCLUSION

Therefore, the petition for a writ of certiorari should be granted, and the RICO claims abandoned to Eliezer Miller under 11 U.S.C. 554(b).

Respectfully submitted,

Eliezer Miller
November 3, 2000

APPENDIX

Appendix 1 — United States Court of Appeals Order Dated June 26, 2000

EDNY/BKNY
99cv533
Korman

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, Foley Square, on the 26th day of June, two thousand.

BEFORE: Hon. Ralph Winter, Chief Judge
Hon. Dennis Jacobs,
Hon. Guido Calabresi,
Circuit Judges.

Docket No. 99-5055

----------x

In Re: Interpictures Inc.,

Debtor.

----------x

ELIEZER MILLER,

Appellant,

v.

GENERALE BANK NEDERLAND, N.V.,

Defendant-Appellee,

INTERPICTURES INC.,

Debtor-Appellee.

----------x

Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ORDERED, ADJUDGED and DECREED that the order of said district court be and it hereby is AFFIRMED in accordance with the opinion of this Court.

FOR THE COURT:
ROSEANN B. MACKECHNIE,
Clerk
by:

s/ Beth J. Meador
Administrative Attorney

A TRUE COPY
Roseann B. MacKechnie, CLERK
by s/illegible
DEPUTY CLERK

ISSUED AS MANDATE: SEP 12 2000

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
SEP 14 2000

UNITED STATES COURT OF APPEALS
FILED
JUN 28 2000
SECOND CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 1999

(Argued: January 11, 2000 Decided: June 26, 2000)

Docket No. 99-5055

In Re: *Interpictures Inc.*,

Debtor.

ELIEZER MILLER,

Appellant,

-v.-

GENERALE BANK NEDERLAND, N.V.,

Defendant-Appellee,

INTERPICTURES INC.,

Debtor-Appellee.

Before:

WINTER, *Chief Judge*,
JACOBS, and CALABRESI, *Circuit Judges*.

Appeal from an order of the United States District Court for the Eastern District of New York (Edward R. Korman, *Chief Judge*), affirming an order by the Bankruptcy

Court (Stanley R. Bernstein, *Bankruptcy Judge*), denying appellant's motion to have the debtor's RICO claim abandoned to him. We affirm and hold that the district court did not abuse its discretion in denying abandonment to appellant on the ground that he lacks a possessory interest in the claim.

ELIEZER MILLER, *pro se*, Brooklyn, New York, *for Appellant*.

P. GREGORY SCHWED, Loeb & Loeb LLP, New York, New York, *for Defendant-Appellee*.

EDWARD P. FREY, Westhampton Beach, New York, *for Debtor-Appellee*.

PER CURIAM:

Eliezer Miller appeals from Judge Korman's affirming of a bankruptcy court order denying appellant's motion to abandon an asset of the debtor to him pursuant to 11 U.S.C. § 554(b). We hold it was not an abuse of discretion to deny appellant's motion on the ground that he lacks a possessory interest in the asset, a civil claim arising under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, and various common law claims (collectively, "the RICO claim" or just "the claim"). We also affirm the bankruptcy court's order that the RICO claim not revest in the debtor upon the close of the bankrupt estate.

BACKGROUND

This appeal arises out of nearly fourteen years of bankruptcy proceedings involving appellant and the debtor, Interpictures Inc. *See Miller v. Generale Bank Nederland, N.V. (In re Interpictures Inc.)*, No. 99-5055, 2000 WL 232149, at **1 (2d Cir. Feb. 3, 2000) (unpublished table decision) (providing a procedural history). We summarize here only that portion of the procedural history relevant to our disposition.

Appellant is a creditor of Interpictures and also claims to own a majority of its shares. In November 1986, creditors commenced an involuntary Chapter 7 bankruptcy proceeding against Interpictures and its wholly owned subsidiaries, which Interpictures quickly converted into a voluntary bankruptcy under Chapter 11. In September 1987, based on appellant's allegations of fraud in the conduct of the debtor's estate, the bankruptcy court appointed an operating trustee. Alleging that the fraud continued even after the trustee's appointment, appellant filed a lawsuit in December 1987 on behalf of the debtor asserting common law fraud and RICO claims against former principals of the debtor, the former trustee, the predecessor to creditor-appellee Generale Bank, Nederland, N.V. (the "Bank") and several other creditors, and counsel to the trustee and Bank. Appellant's action was dismissed on the grounds that: (i) appellant, as an alleged holder of stock in the debtor, lacked standing to bring a derivative lawsuit on the debtor's behalf; and (ii) the RICO claim had not been abandoned to appellant pursuant to 11 U.S.C. § 554, and, absent abandonment, only the trustee could bring it on the debtor's behalf.

The instant motion is the most recent in a series of appellant's unsuccessful attempts to have the RICO claim

abandoned to him. The bankruptcy court denied the motion and ordered that the RICO claim not revest in the debtor at the close of the bankrupt estate, and the district court affirmed the bankruptcy court's order. We remanded the matter to the district court for a more complete statement of its reasons for denying abandonment of the claim to appellant because we were "unable to determine on what ground or grounds the courts below denied [appellant's] motion." *Miller*, 2000 WL 232149, at **1.

On remand, the district court gave alternative reasons for denying abandonment of the RICO claim to appellant: (i) appellant impermissibly sought to have the claim abandoned to him to prosecute in his personal capacity, not to prosecute on behalf of the bankrupt estate; and (ii) appellant lacks a possessory interest in the claim. Appellant thereafter restored jurisdiction in this court pursuant to our remand order and the procedures described in *United States v. Jacobson*, 15 F.3d 19, 21-22 (2d Cir. 1994).

DISCUSSION

Section 554(b) of the Bankruptcy Code provides, in pertinent part, as follows:

> On request of a party in interest ..., the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

11 U.S.C. § 554(b). The parties agree that, for purposes of Section 554(b), the RICO claim is "of inconsequential value and benefit to the" debtor, *id.* *See In re Interpictures, Inc.*, 168 B.R. 526, 536 (Bankr. E.D.N.Y. 1994) (finding that RICO

claim "has no value"). The predicate facts for abandonment having been established, the issue is whether the district court abused its discretion in denying appellant's motion to have the claim abandoned to him. *See Johnston v. Webster (In re Johnston)*, 49 F.3d 538, 540 (9th Cir. 1995) ("Once a bankruptcy court has determined that the factual predicates for abandonment . . . are present, the court's decision to authorize or deny abandonment is reviewed for abuse of discretion.").

Section 554(b) gives the district court discretion to order abandonment of a debtor's worthless or burdensome property, but does not specify to whom such property may be abandoned. *See* 11 U.S.C. § 554(b). Several courts, citing the legislative history to Section 554(b), have held that property should be abandoned only to a holder of a possessory interest in it. *See, e.g., In re Pilz Compact Disc, Inc.*, 229 B.R. 630, 642 (Bankr. E.D. Pa. 1999) ("[A]bandonment must be to an entity with a possessory interest in the property."); *In re Popp*, 166 B.R. 697, 700 (Bankr. D. Neb. 1993) ("Abandonment may be to any party with a possessory interest in the property abandoned." (Quoting S. Rep. No. 95-989, at 92 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5878)); *see also 5 Collier on Bankruptcy* ¶ 554.02[3], at 554-5 (Lawrence P. King ed., 15th ed. 1999) ("Although section 554 does not specify to whom property is abandoned, property may be abandoned by the trustee to any party with a possessory interest in it."). The rationale for this rule is that once the debtor's property is abandoned in bankruptcy, the property should be treated as though no bankruptcy proceedings had occurred and therefore revert to the party that held a pre-petition interest in it. *See In re Popp*, 166 B.R. at 700; *see also Dewsnup v. Timm (In re Dewsnup)*, 908 F.2d 588, 590 (10th Cir. 1990) ("Following abandonment, whoever had the possessory right to the property at the filing of bankruptcy again reacquires that

right." (Citation and internal quotation marks omitted)), *aff'd*, 502 U.S. 410 (1992).

We need not, and do not, decide whether property should be abandoned only to a holder of a possessory interest. It is enough to dispose of this appeal that, in our judgment, the district court did not abuse its discretion in relying on this rationale as a ground for denying abandonment of the RICO claim to appellant. The derivative RICO claim belongs to the debtor's estate. Appellant's status as a creditor to the debtor does not give him either standing to prosecute or a possessory interest in this claim. *See Manson v. Stacescu*, 11 F.3d 1127, 1130-31 (2d Cir. 1993) (holding that creditors of bankrupt estate lack standing to bring RICO claim alleging indirect injury as result of direct injury to estate). And, even if we assume that appellant is a majority shareholder of the debtor and that he is seeking to prosecute the RICO claim on the debtor's behalf, he still cannot be said to have a possessory interest in the claim. *See Rand v. Anaconda-Ericsson, Inc.*, 794 F.2d 843, 849 (2d Cir. 1986) ("The [derivative] RICO action . . . is a corporate asset, and shareholders cannot bring it in their own names . . . ."). Finally, appellant's conduct in these proceedings has led to understandable concern that he might use this claim more as a means of harassment than of obtaining justified relief. *See In re Interpictures, Inc.*, No. 886-11827, slip op. at 3-4 (Bankr. E.D.N.Y. Jan. 29, 1999). Whether such a concern would be relevant to a determination of an abandonment motion by a party with a possessory interest in such a claim is something we need not decide. However, it certainly weighs against abandonment to someone without such an interest who could not bring such a claim without a bankruptcy court order abandoning it to him. Accordingly, we affirm the order denying abandonment of the RICO claim to appellant.

We also affirm the order that the RICO claim not revest in the debtor at the close of the bankrupt estate. As noted, the bankruptcy court exercised its discretion pursuant to Section 554(c) of the Bankruptcy Code and ordered that the RICO claim not revest in the debtor upon the closing of the estate, as it would in the ordinary course. *See* 11 U.S.C. § 554(c) ("Unless the court orders otherwise, any property . . . not otherwise administered at the time of the closing of a case is abandoned to the debtor . . . ."). Appellant has not challenged this order in either his appeal briefs or the submissions he filed with this court after supplementation of the record on remand. Appellant has therefore forfeited any objection to it. *See Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 230 n.1 (2d Cir. 1999) (deeming issues not argued in appellant's brief waived).

Finally, the history of appellant's extensive motion practice concerning the RICO claim renders it necessary for us to underscore that his quest to have that claim abandoned to him has been fully and finally adjudicated. Under our ruling, appellant is not entitled to prosecute the claim and may not seek to do so — on his behalf, on the debtor's behalf, or in any other capacity. Nor may the debtor, upon emerging from the bankruptcy, assert this claim in light of our affirmance of the order that the RICO claim not revest in the debtor. Any motion, lawsuit, or other proceeding seeking to circumvent these rulings may be subject to sanctions.

CONCLUSION

We therefore affirm the orders denying abandonment of the RICO claim to appellant and holding that the RICO claim not revest in the debtor at the close of the bankrupt estate.

Appendix 2 — United States Court of Appeals
Summary Order Dated February 3, 2000

EDNY/BKNY
99cv533
KORMAN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 3rd day of February two thousand.

PRESENT: HON. RALPH K. WINTER,
Chief Judge,

HON. DENNIS JACOBS,
HON. GUIDO CALABRESI,
Circuit Judges.

----------X

In Re: INTERPICTURES INC.,

Debtor.

----------X

ELIEZER MILLER,

Appellant,

-v.- 99-5055

GENERALE BANK NEDERLAND, N.V.,

Defendant-Appellee,

INTERPICTURES INC.,

Debtor-Appellee.

----------X

APPEARING FOR APPELLANT: ELIEZER MILLER, pro se
Brooklyn, NY

APPEARING FOR APPELLEES: P. GREGORY SCHWED, Loeb & Loeb LLP, New York, NY, for Generale Bank Nederland, N.V.

EDWARD P. FREY, pro se,
Westhampton Beach, NY

Appeal from the United States District Court for the Eastern District of New York (Korman, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this matter is directed to the district court for supplementation of the record. This panel retains jurisdiction so that we may dispose of this appeal after receiving such additional facts as are found by the district court.

Eliezer Miller, pro se, appeals from an order of the United States District Court for the Eastern District of New York, entered June 4, 1999, affirming the order of the United States Bankruptcy Court for the Eastern District of New York (Bernstein, B.J.), entered January 29, 1999, which denied Miller's motion for abandonment of a civil RICO claim.

This appeal is the latest chapter in this fourteen-year-old litigation, the background of which we summarized in one of our two previous orders affirming the denial of Miller's motions for abandonment:

> In 1986, Interpictures, Inc. and its wholly-owned subsidiaries Interpictures Licensing Corp. and Interpictures Releasing Corp., in which Miller ostensibly has an interest, converted an involuntary Chapter 7 bankruptcy proceeding to a voluntary Chapter 11 proceeding. In 1987, based on allegations of fraud by Miller, the bankruptcy court appointed Edward P. Frey as the operating trustee. Miller, believing that fraud was continuing in the administration of the bankrupt estate, commenced a civil RICO action. The case was dismissed pending the

> outcome of certain proceedings in the bankruptcy case. Interpictures, Inc. v. Steiner, 87-CV-4211 (E.D.N.Y. October 21, 1992). Since that time, Miller has pursued a lengthy and ultimately unsuccessful series of appeals seeking to have the RICO action abandoned to him.

In re Interpictures, No. 96-5116 (2d Cir. July 25, 1997); see also In re Interpictures, No. 95-5042 (2d Cir. Jan. 24, 1996) (providing a detailed history).

On the present record, we are unable to determine on what ground or grounds the courts below denied Miller's motion. The district court stated that "[t]he part of the [bankruptcy court] order that directed that the RICO claim not be abandoned to the debtors is affirmed for substantially the same reasons set forth in my order of August 3, 1994, affirming the denial of the application to abandon that asset to the debtors."

But the district court's 1994 order rested solely on its finding that "Mr. Miller repeatedly failed to cooperate with the efforts of the Bankruptcy Court in determining whether Miller's claims were meritorious and on what Miller based his claims." On appeal, Miller argues that he has in the interval complied with the requirements for abandonment: (i) he submitted a proposed RICO complaint detailing his allegations of fraud and (ii) he has arranged for counsel to represent him in the RICO litigation if and when the claim is abandoned to him. Appellees dispute whether Miller has satisfied the district court's condition that an experienced attorney be willing to sign and prosecute his proposed RICO complaint. As the record stands now, we decline to resolve this dispute, however. Miller's supposed compliance with the requirements for abandonment took

place well after 1994, so the district court's mere reference to its 1994 order does not sufficiently explain the factual basis or legal reasoning for the instant decision to deny Miller's motion for abandonment.

To the extent the district court order relied on the reasoning set forth in the bankruptcy court order, it is insufficient. Judge Bernstein construed our 1996 summary order, see In re Interpictures, No. 95-5042 (2d Cir. Jan. 24, 1996), as establishing a "law of the case" that "Miller forfeited any right to an abandonment by virtue of his misconduct." In other words, he interpreted our summary order as a mandate to deny Miller standing. That is not so. In our 1996 order, we merely ruled the district court did not abuse its discretion in declining to abandon the RICO claim when Miller had refused — at least as of that time — to demonstrate the value, if any, of the claim. Our order erected no permanent bar to abandoning the claim to Miller.

The bankruptcy court sits in equity and is empowered to invoke equitable principles to achieve fairness and justice. See In re Momentum Mfg. Corp., 25 F.3d 1132, 1136 (2d Cir. 1994) (stating the bankruptcy court "may sift the circumstances surrounding any claim" to avoid injustice "and in so doing it may adopt that remedy which it deems most appropriate under the circumstances" (internal quotation marks omitted); see also 11 U.S.C. § 554; id. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."). We review its decisions under that power for abuse of discretion. See In re Casse, 198 F.3d 327, 341 (2d Cir. 1999). But on the current record, it is impossible for us to review this latest decision to deny the abandonment because we cannot be sure on what factual and legal grounds that decision was based.

Did the bankruptcy court, in the exercise of its equitable powers, refuse to abandon the RICO claim to Miller because doing so would have armed a vexatious litigant with a new tool of harassment? It is clear that the courts doubt Miller will cooperate with their orders if the claim is abandoned to him. But are there any conditions or restrictions that would suffice to avoid abuses?

Accordingly, we direct this case to the district court for supplementation of the record, pursuant to the procedures described in United States v. Jacobson, 15 F.3d 19, 21-22 (2d Cir. 1994). We request that the district court set forth in greater detail its justification for denying Miller's motion for abandonment. Jurisdiction shall be restored to this court when any party informs the clerk of this court by letter that the district court has supplemented the record. Any such letter shall be filed with the clerk of this court no later than twenty days after the district court has made the requested findings.

FOR THE COURT:
KAREN GREVE MILTON,
ACTING CLERK
By:

s/Lucille Carr
Lucille Carr, Deputy Clerk

UNITED STATES COURT OF APPEALS
FILED
FEB 3 2000

Appendix 3 — United States District Court Order Dated May 28, 1999

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X

In re:

ORDER

99-CV-1044(ERK)

INTERPICTURES, INC.,
INTERPICTURES LICENSING CORP., Consolidated
INTERPICTURES RELEASING CORP., with
99-CV-533(ERK)

Debtor.
----------X

KORMAN, J.

The order of the Bankruptcy Court dated January 25, 1999 and effective as of January 25, 1999, is affirmed. The part of the order that directed that the RICO claim not be abandoned to the debtors is affirmed for substantially the same reasons set forth in my order of August 3, 1994, affirming the denial of the application to abandon that asset to the debtors. Appendix to Brief of Appellee Generale Bank Nederland, Ex. B.

SO ORDERED:

s/ Edward R. Korman
Edward R. Korman
United States District Judge

Dated: Brooklyn, New York
May 28, 1999

Appendix 4 — United States District Court Memorandum & Order Dated March 9, 2000. Judge Edward R. Korman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

In re INTERPICTURES, INC., INTERPICTURES LICENSING CORP. and INTERPICTURES RELEASING CORP.,

99 Civ. 1044(ERK) Consolidated with 99 Civ. 533(ERK)

Debtors.

MEMORANDUM & ORDER

----------X

KORMAN, J.

In a summary order issued on February 3, 2000, the Court of Appeals "direct[ed] this case to the district court for supplementation of the record, pursuant to the procedures described in United States v. Jacobson, 15 F.3d 19, 21-22 (2d Cir. 1994)." Summary Order at 4. Specifically, the Court of Appeals asked that I "set forth in greater detail [my] justification for denying [Eliezer] Miller's motion for abandonment." Id.

I begin by answering directly the question posed by the Court of Appeals. The justification for denying Mr. Miller's motion for abandonment is that he sought — as he expressly stated in his notice of appeal from the order of the Bankruptcy Court — "to have the RICO causes of action and all other claims in the above-captioned cases abandoned to him, personally, under 11 U.S.C. 554(b)."

Notice of Appeal (Feb. 8, 1999) at 1.[1] It has been my view from the beginning that Mr. Miller was not entitled to have any property of the estate abandoned to him "personally." Specifically, I made it clear from the outset of this long and drawn-out case that the only circumstance under which Mr. Miller would be permitted to prosecute the RICO and related causes of action was either by purchasing the causes of action or by prosecuting them as a fiduciary on behalf of the estate. I quote here from my memorandum and order of April 11, 1995, which denied rehearing of the order affirming the denial of Mr. Miller's motion for abandonment:

> [A]t a hearing held in the summer of 1992, I proposed a solution to this matter that took into account the competing concerns that have always been present here. See 91 CV 3551, Order dated October 21, 1992, ¶1. The solution, to which the United States Trustee agreed, was to allow Mr. Miller to prosecute the claims at issue for the benefit of the estate provided that his current counsel review the file and prepare a complaint that he would be prepared to sign.
>
> In a letter dated, July 21, 1992, Mr. Miller's counsel advised me that Mr. Miller was prepared to accept this proposal only if the last remaining assets of the estate (approximately $40,000.00) would be expended for this purpose. See letter of F.

---

[1]The notice of appeal is part of a document entitled "Application Seeking Orders for Emergency Relief," filed by Mr. Miller on February 8, 1999, and entered as Docket #2.

> Snitow, dated July 21, 1992, docketed in 91 CV 3551. Because no coherent complaint outlining the basis for the RICO cause of action had ever been prepared, and because of the failure of Mr. Miller or anyone else to offer to purchase them for a comparatively insignificant sum of money, I could not conclude that the expenditure of these assets was appropriate. Mr. Miller then declined to prosecute the action on behalf of the debtor and in the manner suggested.
>
> Mr. Miller's desire to prosecute the claims on his own behalf, presumably with his own resources, only raises further questions about his conduct during the proceedings that are outlined in [Bankruptcy] Judge Conrad's opinion, as well as his conduct of the proceedings here.
>
> While I am not prepared to reconsider the order affirming the denial of Mr. Miller's motion for abandonment of the assets, Mr. Miller remains free to file an application for permission to prosecute the causes of action for the benefit of the estate on the condition that his current able counsel, or one of equal competence, review the file and prepare a complaint that he or she would sign and prosecute [(footnote omitted)]. Mr. Miller could be reimbursed for the payment of any counsel fees, to the extent not authorized by statute, from any sums recovered.

In re Interpictures, Inc., 94 Civ. 1235, Memorandum & Order at 2-3 (Apr. 11, 1995).

While my April 11, 1995 memorandum and order also suggested that it would be inappropriate to abandon the claim to Mr. Miller because of his failure "to provide a document containing a coherent statement of his proposed RICO cause of action, or any other cause of action," id. at 3, my refusal to order abandonment to him personally was not based on that ground alone.

The Second Circuit affirmed in a summary order that likewise made it clear that the only abandonment here could be to the debtors. It construed Mr. Miller's request as one for abandonment to the debtors "so that he can assert the right (on the debtors' behalf) to prosecute it." In re Interpictures, Inc., No. 95-5042, Summary Order at 6 (Jan. 24, 1996) (emphasis added). The summary order quite clearly indicates that it, too, never contemplated abandonment to Mr. Miller personally:

> If this cause of action is meritless — and therefore worthless — the bankruptcy court is obliged to order it abandoned to the debtor. However, the bankruptcy court is not constrained to abandon property that may have value, and it has the discretion to await the disclosures and investigations it requires to make that determination. Here, Miller commenced the RICO suit and seeks its abandonment to the debtors so that he can assert the right (on the debtors' behalf) to prosecute it. Miller is therefore presumptively in the best position to apprise the bankruptcy court as to the merits (and the value) of the claim. . . .
>
> The bankruptcy court could order abandonment of the cause of action to the

> debtors and later reopen bankruptcy proceedings to retake it, if and when the claim proves valuable and it is discovered that Miller induced abandonment by a failure to make required disclosures that would have allowed the court to appreciate the claim's true value. [(Citations omitted.)] By the same token, however, the bankruptcy court has discretion to deny abandonment on the ground that, by so doing, Miller ultimately may be compelled to disclose the facts that support the allegations or the lack thereof.

Id. at 6-7 (emphases added).

Judge Bernstein's amended memorandum and order, which was the subject of the current appeal to me and to the Second Circuit, reflected his understanding that the affirmance by the Second Circuit of the denial of abandonment to Mr. Miller "may have left only one logical alternative for Mr. Miller to pursue. That was to move for leave to prosecute the RICO Claim as a special fiduciary of the bankruptcy estate." Amended Memorandum & Order at 2. Judge Bernstein correctly observed, however, that Mr. Miller had subsequently sought such relief and that it had been denied because of "Miller's stated unwillingness on the record through his counsel to prosecute the action on behalf of the estate by advancing all of the funds necessary for that purpose." Id.

Judge Bernstein assumed that Mr. Miller was now seeking to prosecute the RICO cause of action as a fiduciary on behalf of the estate with his own funds. Judge Bernstein denied the application for a variety of reasons relating to the bizarre and often irresponsible manner in which Mr.

Miller has conducted himself here. Judge Bernstein also ordered that the cause of action not be abandoned to the debtors. The notice of appeal Mr. Miller filed, however, made it clear that he was not seeking abandonment of the RICO cause of action so that he could assert the right on behalf of the debtors. Rather, the only issue presented by Mr. Miller's appeal was whether abandonment should have been ordered to him "personally." Under these circumstances, it was unnecessary for me to decide the issue of whether Judge Bernstein could properly have denied a motion for leave to prosecute the RICO claim as a special fiduciary of the bankruptcy estate or whether he correctly ordered that the RICO cause of action not be abandoned to the debtors pursuant to 11 U.S.C. § 554(d).

The brief filed by Mr. Miller and the amicus brief filed by Aaron M. Schreiber, Esq., in support of Mr. Miller's present appeal to the Court of Appeals ask the Court of Appeals to reverse and order the RICO claim and related causes of action to be abandoned "to Eliezer Miller, Creditor, Appellant, herein under 11 U.S.C. 554(b). Miller Brief at 12; see also Amicus Brief at 17. Judge Bernstein did not understand that Mr. Miller was seeking relief either "personally" or in his capacity as a "creditor." On the contrary, Judge Bernstein viewed Mr. Miller's application as one "for leave to prosecute the RICO Claim on behalf of the estate." Amended Memorandum & Order at 3. Indeed, Mr. Miller's status as a shareholder of the debtor remains contested and unresolved, and it is unclear what the underlying basis is for the debtor/creditor relationship that Mr. Miller claims between himself and the debtor.[2]

---

[2]Because of the manner in which he became a shareholder, the estate may be a creditor of Mr. Miller. "Mr. Miller's claim to shareholder status is based on the alleged exercise of a stock option

Nevertheless, even if Mr. Miller's present claim is addressed on the merits, § 554(b) of the Bankruptcy Code would not entitle him to relief. Section 554(b) provides that, "[o]n request of a party in interest . . ., the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b). "Section 554 was enacted because Congress was concerned that some trustees were taking burdensome assets into the estate and selling them to increase their commissions, rather than to benefit the estate. [In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987).] Bankruptcy courts were thus empowered to order the trustee to abandon property at the request of a party in interest if the property was of no benefit to the estate. Id." In re Interpictures, Inc., No. 95-5042, Summary Order at 5-6 (Jan. 24, 1996).

While it is not surprising, in light of the purpose of § 554, that a motion to abandon may be made by any party interested in preventing the trustee from retaining burdensome assets, the legislative history of § 554 states that such "[a]bandonment may be to any party with a possessory interest." H.R. Rep. No. 595, 95th Cong., 1st Sess. 377 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 92 (1978). U.S. Code Cong. & Admin. News 1978, pp. 5787, 5878, 5963, 6333. Relying either on that legislative history or upon "the historical meaning surrounding the effect of abandonment," In re Pilz Compact Disc, Inc., 229 B.R. 630, 643 (Bankr. E.D. Pa. 1999), the case law appears to hold uniformly that a party's status as a creditor is not sufficient

---

purchasing over seven million shares of the predecessor corporation of Interpictures, at the price of a penny a share, in exchange for a promissory note." Memorandum & Order at 2 (Aug. 3, 1994).

without more to entitle him to have property of the debtor abandoned to him.

> Courts have interpreted the legislative history and § 554(b) to mean that abandonment should be to the party with the superior possessory interest . . . .
>
> Thus, the party who has the right to possession at the filing of the bankruptcy will reassume the same status when the asset is abandoned. [In re Cruseturner, 8 B.R. 581, 591 (Bankr. D. Utah 1981)]. "Normally this party is the debtor, but it is conceivable that a creditor may be entitled to possession instead if, by the exercise of its contractual or other rights, it held a possessory interest prior to the filing of the bankruptcy." Id.

In re Popp, 166 B.R. 697, 700 (Bankr. D. Neb. 1993); see also Pilz, 229 B.R. at 642 ("abandonment must be to an entity with a possessory interest in the property"); In re Service, 155 B.R. 512, 514 (Bankr. E.D. Mo. 1993) (abandonment to secured creditor impermissible where creditor was not in possession of property); In re A.J. Lane & Co., Inc., 133 B.R. 264, 268 (Bankr. D. Mass. 1991) (mortgaged property could be abandoned both to debtor, which had right to possession at time of bankruptcy filing, and to mortgagee, which had right to possession by virtue of court-ordered relief from automatic stay of foreclosure proceedings).

While Mr. Miller has worn many hats in this proceeding, he is not a person with a possessory interest in the RICO cause of action, and he was not entitled to have the property abandoned to him personally.

Conclusion

I apologize to the Court of Appeals for my cryptic order of May 28, 1999. The order reads as follows:

> The order of the Bankruptcy Court dated January 25, 1999 and effective as of January 25, 1999, is affirmed. The part of the order that directed that the RICO claim not be abandoned to the debtors is affirmed for substantially the same reasons set forth in my order of August 3, 1994, affirming the denial of the application to abandon that asset to the debtors. [In re Interpictures, Inc., 94 Civ. 1235.] Appendix to Brief of Appellee Generale Bank Nederland, Ex. B.

The order was not only cryptic, it also misdescribed the part of the order of the Bankruptcy Court that was being affirmed for "substantially the same reasons set forth in my order of August 3, 1994," and it referred to the original order in 94 Civ. 1235, rather than to the memorandum and order of April 11, 1995 denying reconsideration. The original order in 94 Civ. 1235 addressed the issue of the abandonment to the debtors, "rather than Mr. Miller personally." Id. at 2. In the April 11, 1995 order, in addition to denying reconsideration, I also declined to grant Mr. Miller's request for abandonment of the RICO cause of action to himself. This was the order to which I intended to adhere.

I withdraw the order of May 28, 1999, which was not drawn with the requisite care, and affirm the order of the Bankruptcy Court for the reasons stated here.

SO ORDERED.

Brooklyn, New York
March 9, 2000

s/ Edward R. Korman
Edward R. Korman
United States District Judge

Appendix 5 — United States Bankruptcy Court Amended Memorandum Opinion Dated January 29, 1999. Judge Stan Bernstein

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	X
Interpictures, Inc. Interpictures Licensing Corp. Interpictures Releasing Corp.	Case No. 886-11827 X
Debtors	Chapter 7 Cases Jointly Administered for Administrative Purposes

AMENDED MEMORANDUM OPINION DENYING ALL PENDING MOTIONS FILED BY ELIEZER MILLER FOR ABANDONMENT OR FOR LEAVE TO PROSECUTE THE ESTATE'S RICO CLAIM[1]

I. BACKGROUND

On January 26, 1996, the Court of Appeals for the Second Circuit affirmed the District Court's affirmance of an order of the Bankruptcy Court which denied a Motion filed by Eliezer Miller (Miller) to have a RICO Claim abandoned to him. Exercising the equitable powers of the bankruptcy court under 11 U.S.C. section 105(a), the

[1]This Amendment to the prior Memorandum Opinion corrects minor errors and adds citations to the Bankruptcy Code and case law.

Honorable Francis G. Conrad denied that motion. In its summary memorandum and order of January 26, 1996, the Court of Appeals held that Judge Conrad did not abuse his discretion in denying Miller's Motion for Abandonment. The basic reason for denying Miller's Motion was the movant's long history of refusing to make available whatever information the movant might have had to demonstrate the value or lack thereof of the RICO Claim. Although as a general proposition of bankruptcy law, a trustee should not permit a potentially valuable asset, the Court of Appeals noted, such as a cause of action, to "evaporate" through non-prosecution, that proposition is trumped by a party in interest's sanctionable conduct of non-disclosure to the trustee. In this respect, Miller only has himself to blame for any "evaporation" of an asset of rather dubious value.

In retrospect, that affirmance in January of 1996 may have left only one logical alternative for Miller to pursue. That was to move for leave to prosecute the RICO Claim as a special fiduciary of the bankruptcy estate. Miller filed such a motion, which again Judge Conrad denied. In the narrowest reading of that hearing on Miller's motion held on May 28, 1996 and of the order, dated June 21, 1996 (Order Denying Mr. Eliezer Miller's Request to Prosecute a RICO Claim on behalf of the Estate and Directing the Trustee to Close the Estate); the denial was predicated upon Miller's stated unwillingness on the record through his counsel to prosecute the action on behalf of the estate by advancing all of the funds necessary for that purpose. That order was upheld by the District Court in an order of July 22, 1996, which was docketed on July 24, 1996. When Miller moved for reconsideration of the order of affirmance, District Judge Edward R. Korman denied that motion in an order dated August 6, 1996, and docketed on August 9, 1996. Miller appealed the Order dated August 6, 1996. The

Court of Appeals affirmed Judge Korman's Order in a summary order of July 25, 1997.

To show that there is no reasonable possibility of confusion on the issue of Miller's prosecuting the RICO Claim on behalf of this estate, this Court will now simply quote from the relevant passages in the memorandum that is part of that summary order. The Court of Appeals referred to its prior opinion and order of January 23, 1996:

> affirming a prior instance of the bankruptcy court denying a motion for abandonment to Miller. Miller v. Credit Lyonnaise, No. 95-5042 (2d Cir. Jan. 23, 1996). In wake of this court's ruling, Miller renewed his request to prosecute the RICO Case. In May, the bankruptcy court in an oral ruling denied that request. Miller then appealed to the district court and it is the rulings in its July 24th order that are now appealed . . . Miller appeals from the district court's rejection of his motion for reconsideration . . . The district court's denial of Miller's motion to reconsider did not constitute an abuse of discretion. In its initial denial of Miller's appeal from the bankruptcy court, the district court held that the bankruptcy court properly denied the motion for abandonment because the remaining assets of the debtor could not be used . . . to prosecute the RICO Claim. Miller does not dispute this conclusion.

At this juncture, for the sake of a fully coherent explanation, it is necessary to interrupt quoting the text of the Court of Appeals opinion for a moment, and step back to deal with an irrelevant issue that Miller has kept raising.

In statements by the bankruptcy court during the hearing held on May 28, 1996, Judge Conrad apparently mis-recollected some dicta from the Court of Appeals' January 26, 1996 opinion and order. The Court of Appeals noted in passing that the trustee's abortive auction of the RICO Claim and other assets in August 6, 1991 did not constitute an administration of those assets. Judge Conrad's contrary view, that an auction is an administration and, therefore, once an asset is put up for auction, it cannot be abandoned, was, in this nominal sense, repudiated, but, as this Court has noted, that repudiation of Judge Conrad's conceptualization was just dictum. It was dictum for the controlling reason that Judge Conrad denied Miller's Motion for abandonment for the RICO Claims on the independent and legally adequate ground that Miller's history of non-disclosure to, and non-cooperation with, the chapter 7 trustee was the reason for the denying his motion. That holding is set forth in Judge Conrad's order on June 21, 1996 following the May 28 hearing. And that holding is the ratio decidendi both by the District Court and by the Court of Appeals, which has absolutely nothing to do with the auction-as-administration conceptualization. To put the point as forcefully as this Court can, and for the last time, the issue of "auction-as-administration" is a complete "red herring."

This Court's assessment is further supported by the remaining language in the Court of Appeal's opinion of July 25, 1997:

> Instead, Miller argues that the district court's ruling is in error because it did not specifically repudiate the bankruptcy court's finding that the RICO Claims were fully administered. The district court's silence on

this point is irrelevant in the light of a dispositive and legitimate basis for its ruling.

The Court of Appeals then went on to affirm Judge Korman's refusal to withdraw the reference of these matters, and also to deny Miller's motion to have the Court of Appeals exercise original jurisdiction over these matters. Then the Court of Appeals stated, in words that are as stern as one could imagine for a *pro se* litigant:

> We deem the instant appeal and accompanying motions for original relief in this court to be frivolous. Miller is warned that if he continues to invoke appellate process for frivolous purposes, we may impose monetary sanctions against further filings without obtaining leave of court.

Then the Court of Appeals concluded its brief memorandum opinion by affirming Judge Korman's order docketed on August 9, 1996. As he is his wont, Miller moved for reconsideration of the Court of Appeals decision of July 25, 1997, *en banc*, and that motion was denied by an order of September 19, 1997.

In light of this record, it is nothing less than astonishing that Miller has filed yet another round of motions for abandonment, withdrawal of the reference, and for leave to prosecute the RICO Claim on behalf of the estate. Miller fully deserves to be sanctioned for his continuous filing of further frivolous and multiplicitous pleadings of matters that have already been determined at three levels of the federal judiciary.

The latest twist is Miller's belated willingness to advance the costs to prosecute the RICO Claim; that

motion, in substance, is once again before this Court. Miller further asserts that he retained expert RICO counsel, Snitow & Paully, which prepared a third amended complaint alleging the RICO Claims, and that presumably he is now finally prepared to submit both the credentials of his new counsel and the draft of the complaint to the district court or the magistrate judge for determining the sufficiency of the proposed pleading.

II. DISCUSSION

Rather than resort to a status conference or to a hearing on the record, with Miller having to carry the burden on his motion, the records of this case indisputably show, as detailed in Judge Conrad's published opinion at 168 B.R. 526 (Bankr. E.D.N.Y. 1994), that Miller will not appear for the conference or hearing despite repeated notices. Miller has repeatedly insisted that he does not recognize the validity of any orders issued by this Court. Why should the Court then go through the fruitless exercise of scheduling a hearing and burdening other parties in interest with having to incur further costs and legal fees, especially since Miller's habit is not to appear? The only question before the Court is a purely legal question. Therefore, Miller's motions shall be deemed submitted on the pleadings.

After carefully reading both the January 26, 1996 and the July 25, 1997 opinions and orders of the Court of Appeals, this Court does not comprehend how, as a matter of "the law of this case," Miller could, consistent with F. R. Bankr. P. 9011, ever file another motion for an abandonment of the RICO claim to him or for leave to prosecute the RICO Claim on behalf of the estate. For the very precise and unmistakable holding of the Court of Appeals in its January 26, 1996 opinion is that Miller

forfeited any right to an abandonment by virtue of his misconduct. This is more than a matter of terminology or proper bankruptcy parlance - it is lies at the very "heart of darkness" in this case. The only remote logical possibility left open, and that is as narrow an opening as is theoretically possible, would be for Miller to be permitted to prosecute the RICO Claim as a special fiduciary on behalf of the estate provided that he advances all of the costs of prosecution. He would be reimbursed for those advances (to the extent necessary and reasonable), only if he obtains a final judgment on that RICO Claim. This remote possibility would exist, only if one were to read the July 25, 1997 for the narrowest holding — that existing estate funds cannot be used for the prosecution. That narrowest holding may have left undecided the question whether Miller should be permitted to prosecute the RICO Claim with his own funds.

But reading both the January 26, 1996 and July 25, 1997 opinions together raises in the Court's mind a very serious question of law and equity whether Miller can or should be permitted to go forward to prosecute the RICO Claim as a special fiduciary for the estate. For whether it is prosecution of the RICO Claim for the estate because it has value for the estate, or abandonment to him as a valueless asset; in both instances, the very practical result – and the whole purpose of his pursuit – is to surrender effective control to Miller over that cause of action. In all likelihood, Miller will use it for whatever nuisance value it may remotely possess. One would have to be completely naive to assume any other outcome. But putting aside any predictions, which are grounded in the experience of the real world that every judge has to bring to his or her determinations, the controlling consideration is that Miller simply cannot be trusted to act in any representative capacity for the estate.

The pregnant question remains quite elementary: How can Miller be permitted to do indirectly what he has expressly been forbidden to do directly by the Court of Appeals?

(I) Pursuit on behalf of the estate of the RICO Claim with his own funds versus (II) abandonment of the RICO Claim to him is, this Court submits, not only a distinction without any substantive difference, but a misreading of the unmistakable thrust, purport, or implication of the decisions of the Court of Appeals. In this respect, this judge respectfully disagrees with the dictum stated of his colleague, the Honorable Francis G. Conrad, that it is "as clear as a Vermont stream in the summertime" that if Miller fronts the costs, he should be entitled to go forward as the representative of the estate. Indeed, if the history of this case demonstrates nothing else, it is that Miller can never be trusted to exercise any fiduciary duties on behalf of the estate. As one New Englander to another, this judge would suggest that the more appropriate metaphor for this case is: Miller's trustworthiness is the Muddy River that seeps through the Back Bay and Fenway in Boston.

This Court believes that affording Miller an opportunity to act as a representative of the estate, in effect, rewards the very misconduct that the Court of Appeals found sufficiently culpable to serve as the basis for denying the abandonment of the RICO Claim to him in the first place. Now that he is barred from seizing this asset as his own, Miller is now asking to be granted formal recognition as a special fiduciary for the estate in prosecuting a cause of action of indeterminable value. Moreover, as the special fiduciary for the estate, Miller, as properly pointed out by Judge Conrad, would have to act under the general supervision of the trustee, Mr. Sapir, and Miller would have to have his special litigation counsel approved by the

trustee and by this Court. There is nothing in the record that would suggest that Mr. Sapir would agree to having Miller serve in this fiduciary capacity. It is essential never to lost sight of the finding by the Court of Appeals that Miller forfeited any claim for an abandonment because he refused to cooperate with this very trustee.

It defies formal logic, common sense, and elementary justice for this Court to grant Miller leave to prosecute this RICO Claim as the special fiduciary agent for the trustee and the estate. All major litigation decisions have to be approved by the trustee - for the premise to granting leave to Miller is that he will recover an asset for the estate, not for himself as shareholder or an insider creditor. That would impose an impossible burden on the trustee. After all these years, how can a realistic and pragmatic judge accept the proposition that once Miller is given what he wants - "not for himself, but for the estate" - after twelve years of throwing the legal equivalent of temper tantrums, that he will be miraculously reformed and will now become wholly co-operative with the trustee? That assumption can only be characterized as extreme naivete or, worse, complete foolishness.

There is another practical consideration, although it is not the rationale for this memorandum opinion and order. Can it be truly arguable at this late date that the statute of limitations has not run for asserting this federal RICO Claim? The general statute of limitations period is four years. 15 U.S.C. section 15(b). See Agency Holding Corp. v. Malley-Duff & Assoc., Inc., 483 U.S. 143, 107 S.Ct. 2759, 2767, 97 L. Ed. 2d 121 (1987) (the four year statute of limitations provided in the Clayton Act, 38 Stat. 731, as amended, 15 U.S.C. section 15b, applies uniformly in all civil RICO actions). See also Nakamoto v. Hartley, 758 F, Supp. 1357, 1361 (D. Haw. 1991) ("The limitations period

begins to run when the plaintiff knows or should know of the injury that forms the basis for the action. Stitt v. Williams, 919 F.2d 516, 525 (9th Cir. 1990).")

The RICO Claim, initially filed as a complaint on February 26, 1987, Interpictures Leasing Corp. v. Credit Lyonnaise Bank Nederland, N.V., *et al.*, Adv. Pro. 87-25, was dismissed by order of the District Court on October 21, 1992 without prejudice, *sub. nom.*, Eliezur Miller v. Lee Steiner, *et al.*, in 87-CV-4211 (ERK).[2] But in 1987, when the complaint was originally filed, it related to events that allegedly occurred several years before. Now it is late January 1999, more than eleven years after the initial filing date of the complaint, and more than five years after its dismissal. The only conceivable argument for asserting jurisdiction would be based upon some concept of equitable tolling of the statute of limitations. Under the totality of the facts and circumstances of this case, it does not, however, appear to this Court that a federal RICO Claim (assuming solely for the purpose of argument that the third amended complaint would meet some requisite level of sufficiency in pleading set by the District Court or Magistrate Judge), filed at this time would satisfy even the most liberal or aggressive reading of "equitable tolling." Nakamoto, 758 F. Supp. at 1362. The only one Miller has to

---

[2] It is virtually impossible, given the proliferation of separate numbers for adversary proceedings in the bankruptcy court, civil actions and appeals in the District Court, appeals in the Court of Appeals, and procedural or administrative consolidation of the three underlying bankruptcy cases over their twelve year history, to trace with any high degree of confidence the numbering scheme for the RICO Claim, but there is no doubt whatsoever in this Court's reading of the entire record that the District Court rules conclusively that the RICO Claim was dismissed without prejudice by 1992. "Without prejudice" does not mean that the applicable statute of limitation is suspended indefinitely.

blame for all this delay is himself - it was Miller who filed the frivolous appeals right through 1997. In the end, this Court will not indulge any further motion practice that now aims at resuscitating a RICO Claim of dubious value that is long past any arguable deadline for an equitable extention of the RICO statute of limitations.

Thus, the proper disposition of this matter is to deny Miller's motion to prosecute the claim on behalf of the estate - he has long ago forfeited by his misconduct any arguable claim to serve as a fiduciary for the estate. This means that the trustee can once again proceed to complete his administration of the estate and close the case. But since the RICO Claim has not been administered, as stated in dictum by the Court of Appeals, the RICO Claim would by operation of law revest in the shell corporation which remains under Miller's control. The solution to prevent that miscarriage of justice is to rely upon the introductory qualifying limitation to section 554(d) – "Unless the court orders otherwise...," which provides that the Court has the authority to bar the revesting of that asset in the debtor.[3] This is the construction this Court believes to be proper of this introductory qualifying phrase. And, yes, this construction has exactly the legal consequence of making the RICO Claim evaporate. But since the RICO Claim has lost any validity through the passage of time, there is really nothing that remains to be evaporated. Nevertheless, this Court has now determined that the RICO Claim shall not revest in the Debtor upon the closing of this case. Miller should understand or least be familiar with the fundamental legal and moral concept that one cannot profit

---

[3] The full text of section 554(d) is: "Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate."

from one's own wrong-doing. That is the moral lesson to be drawn from this entire record.

This should now dispose of all pending motions before this Court.

SO ORDERED.

January 29, 1999, effective
as of January 25, 1999
Westbury, NY

Stan Bernstein
Bankruptcy Judge

As a post-script, I have considered the issue of recusal very seriously. Of some concern to me is that in all of the notices issued by Miller, the law firm of Loeb & Loeb is listed. Loeb & Loeb was named, along with its client, Credit Lyonnaise, as defendants to the RICO action. That action has, of course, not been of record for the past six years or so, but Loeb & Loeb remains in the periphery of this case as a potential target defendant to the RICO Claim.

Thus, I disclose that when I first began in law practice in 1974 in Detroit as an associate at Honigman, Miller, Schwartz & Cohn, having been graduated from law school in 1973, I soon began representing significant clients of Loeb & Loeb, headquartered in Los Angeles, as local counsel, including Larwin Mortgage Investors, later known as LMI Investors, in substantial commercial mortgage foreclosure actions filed in the federal district court under its diversity jurisdiction. Over the course of a few years, I bore primary trial responsibility for several of those long-term cases at least through 1980. I withdrew from the Honigman firm as an equity partner as of October 31, 1982 to serve on the bankruptcy court for the Eastern District of Michigan, beginning on November 17, 1982. After 1983, I developed a very close professional and personal

relationship with Robert L. Ordin, a former bankruptcy judge from Los Angeles, who served Of Counsel to Loeb & Loeb for at least ten years. During the course of that personal and professional relationship, Bob Ordin often served as a principal character reference for me. Our relationship was "continuous, open and notorious," for we often served as co-panelists in continuing legal education programs on bankruptcy subjects over the years in various jurisdictions around the country. Finally, in the spring of 1990, with Bob Ordin's support, I began active negotiations to join Loeb & Loeb as a partner in its West Coast bankruptcy practice, with the idea of perhaps opening a satellite office for the firm in Phoenix, Arizona where I was then practicing. Because of client conflicts and some other considerations, that negotiation did not come to fruition, and in January of 1991, I relocated to practicing law in Boston, which I continued until my appointment to this court on November 1, 1996. From time to time during the early 1990s, Loeb & Loeb occasionally represented adverse parties in matters in which I represented other business clients in Boston, but I do not recall ever having any matters with Loeb & Loeb's New York partners or associates during that period, nor did I ever undertake to represent any clients of Loeb & Loeb in Boston. Bob Ordin left Loeb & Loeb a few years ago, and is now fully retired. I do not believe that this sort of relationship with Loeb & Loeb serves as a basis for disqualification in this case or in any other case, but because the whole issue of recusal is highly subjective, I have decided it is best to make this disclosure, even if I am satisfied that this past relationship with Loeb & Loeb is not disqualifying.

Appendix 6 — United States Court of Appeals Order Dated August 11, 2000, Denying Petition for Rehearing and a Copy of the Petition

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

ROSEANNE B. MACKECHNIE
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 11th day of August, two thousand

Present:

Hon. Ralph K. Winter, Chief Judge
Hon. Dennis Jacobs,
Hon. Guido Calabresi,

CIRCUIT JUDGES.

UNITED STATES COURT OF APPEALS
FILED
AUG 11 2000
SECOND CIRCUIT

In re: Interpictures

Docket No. 99-5055

A petition for panel rehearing having been filed herein by Eliezer Miller

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

FOR THE COURT
ROSEANN B. MACKECHNIE, Clerk

By: s/Beth J. Meador
Beth J. Meador,
Administrative Attorney

USCA #99-5055

Related USCA Case Nos: 95-5042
96-5116

UNITED STATES COURT OF APPEALS July 18, 2000
FOR THE SECOND CIRCUIT

X

In Re: Interpictures Inc.,
Debtor.

X

ELIEZER MILLER,
Appellant,

-v. -

GENERALE BANK NEDERLAND, N.V.
Defendant-Appellee,

INTERPICTURES INC.,
Debtor-Appellee.

X

PETITION FOR {i} REHEARING OF MY ENTIRE APPEAL, DECIDED JUNE 26, 2000. {ii} REQUEST THAT THE COURT WITHDRAW ITS *SUA SPONTE* ORDER, THAT

"UNDER OUR RULING, APPELLANT IS NOT ENTITLED TO PROSECUTE THE CLAIM AND MAY NOT SEEK TO DO SO - ON HIS BEHALF, . . . OR IN ANY OTHER CAPACITY", BECAUSE THIS COURT LACKED JURISDICTION, SINCE NO LOWER COURT EVER RULED ON THIS QUESTION. THIS ORDER CONSTITUTES A MANIFEST INJUSTICE AND VIOLATES AND DENIES APPELLANT'S RIGHTS OF DUE PROCESS OF THE LAW UNDER THE CONSTITUTION OF THE UNITED STATES OF AMERICA. {iii} REQUEST THAT THE COURT GRANT APPELLANT'S RIGHT TO BE HEARD ON THE NEW GROUNDS GIVEN BY THE DISTRICT COURT, UPON WHICH THIS COURT AFFIRMED, WITHOUT A HEARING.

BEFORE: Hon. Ralph Winter, Chief Judge
Hon. Dennis Jacobs,
Hon. Guido Calabresi
Circuit Judges,

Eliezer Miller, creditor, shareholder, appellant, *pro-se*
455 Foster Avenue
Brooklyn, New York 11230
Tel: 718 438-4776

TABLE OF CONTENTS

First Reason Page 2

POINT 1.

The Court lacked jurisdiction to issue an order, sua sponte, *without the lower courts having made any finding or ruling on this question,* to enjoin appellant to prosecute a

fraud claim "on his behalf" . . . "or in any other capacity" wherein appellant alleges that he has standing to bring the claim, because he was the only party whom defendants aimed to injure. This matter did not reach the Court on appeal.

POINT 2.

Even if the matter would be before the Court, The Court overlooked the fact that the ruling of the Second Circuit, that in a particular case, as this, where the appellant alleges that he is not merely a creditor, but is the party whom the defendants aimed to injure, appellant has standing.

POINT 3.

The Court accepted the new conditions set, and the new findings made, by the district court, to deny abandonment, and this Court affirmed on those grounds. But the district court lacked jurisdiction to do so.
These rulings constitute a manifest injustice, and violates and denies the appellant his right to due process of the law under The Constitution Of The United States Of America.

Second Reason Page 6

The Court overlooked the fact that it affirmed an order that does not exist - denial of abandonment to appellant. The district court conceded that it made a mistake, and affirmed the part of the bankruptcy court's order which denied abandonment to the *debtors*, instead of affirming the part of the bankruptcy court's order which denied abandonment to the *appellant*.

Third Reason Page 9

The Court has overlooked the fact that it is not possible for any party interest to hold a "possessory interest" in a cause of action that arose from the fraud committed during a Bankruptcy Proceeding and therefore the Court's "rationale" for requiring appellant to be a holder of a "possessory interest" is misapplied, therefore the district court clearly erred, because it imposed an impossible requirement, which is only applicable to other estate properties.

Fourth Reason Page 11

The Court held in this case that "When the asset in question is a cause of action" the trustee must abandon and not "permit a possibly valid claim to evaporate and a defendant to escape liability". Therefore, the district court clearly abused its discretion by relying on the rationale of the lower Bankruptcy Courts, rather than ruling according to this Court's holding in this case - "Law Of The Case"

Fifth Reason Page 11

The Court overlooked its own holding in this case that "When the asset in question is a cause of action, . . . a trustee 'may not simply do nothing and thereby permit a possibly valid claim to evaporate and a defendant to escape liability"

Sixth Reason Page 12

The Court affirmed the district court, but overlooked the fact that, although appellant requested, to be granted his right for oral argument, because the district court set a new condition, made a new finding, and on those grounds

issued a new order and denied abandonment to appellant for lack of "possessory interest" - the Court did not conduct any Hearing. This constitutes a violation of my Constitutional rights and denies me my right to due process of the law.

The Court, in affirming the district court, overlooked the fact that although appellant requested, on March 28, 2000 in RESPONSE TO THE SUPPLEMENTATION, I was not given an opportunity for oral argument on the district court's new grounds to deny abandonment - lack of "possessory interest" - issued March 9, 2000, I Believe this constitutes a violation of my Constitutional rights and denies me my right to due process of the law.

Seventh Reason Page 12

The Court, by affirming the district court's denial to abandon and by further ruling that "appellant is not entitled to prosecute the claims and may not seek to do so - on his behalf, . . . or in any other capacity" effectively condones the bankruptcy fraud committed, the lower court's violation and denial of my Constitutional Rights to due process of the law, which were continuously denied throughout the proceedings in the lower courts as memorialized in my 22 page Brief on appeal before Judge Korman filed by my Counsel Snitow & Pauley on August 22, 1994. {Last exhibit in Exhibit 6 to my Brief on this appeal}.

TABLE OF AUTHORITIES

CASES:

Bankers Trust C. v. Rhoedes, 859. F2d 1097 {2d Cir. 1988} 52a, 55a

In Re Interpictures case #95 5042, 1996 ..... 54a, 67a

In Re Interpictures case #96 5116 1997 ..... 54a, 56a

In Re Ira Haupt & Co., 398F.2d 607, 613 {2d Cir. 1968} 64a, 68a

STATUTES

Fed. Civ. P. 15[a] 52a

18 U.S.C. section 1334[a] 56a

28 U.S.C. 157, 158[a] 56a, 57a, 60a

11 U.S.C. 554[d] 75a

OTHER AUTHORITIES

Grafman. 743 F Supp. at 549 ..... 52a

W.L. Norton, Norton Bankruptcy Law And Practice, 2d Sec. 53:1 ..... 64a

Eliezer Miller, Appellant, based on seven {7} reasons, hereby respectfully requests a Rehearing of the entire appeal, and further respectfully requests:

(i) That the Court withdraw its *sua sponte* Order, on page 7, and I quote:

> Under our ruling, appellant is not entitled to prosecute the claim and may not seek to do so —on his behalf,.....or in any other capacity. (emphassis added)

The issue, whether appellant has standing to prosecute the RICO on own behalf alleging that he was the "party whom the defendants directly aimed to injure" as demonstrated in the complaint, was never addressed by any court. Therefore this Court lacks original jurisdiction to make such a finding, or enter such an Order.

(ii) REQUESTS THAT THE COURT GRANT APPELLANT'S RIGHT TO BE HEARD ON THE DISTRICT COURT'S, SETTING OF NEW CONDITION, MAKING OF NEW FINDING, ENTERING NEW ORDER, AS GROUND TO DENY APPELLANT ABANDONMENT, UPON WHICH THIS COURT AFFIRMED WITHOUT A HEARING.

Denial of a Hearing to which appellant is entitled to would constitute a manifest violation and denial of appellant's right to due process of the law under The Constitution Of The United States Of America.

Preliminary, I respectfully wish to point out to this Honorable Court that the lower courts refused to permit the prosecution of this RICO even for the benefit of the creditors' estate. In December 1989, appellant, as president of the Debtors-in-Possession retained Hill, Betts, and Nash as special counsel specifically to prosecute this RICO for the benefit of the creditors and the estate ("justified relief") but Judge Conrad denied their retention and immediately

converted this case to a Chapter 7, {before Judge Korman, on my appeal, reversed the denial of retention of Hill, Betts, and Nash} thereby preventing appellant from pursing the claims for the benefit of the creditors. Because the Trustee refused to prosecute the claims, the appellant moved for abandonment to the debtors. That was denied {3} three times in the bankruptcy court and three times affirmed in the district court.

This judicial process took from April 1991 to July 31, 1996. On July 31, 1996, appellant, for the first time, moved for abandonment to him "personally". The denial of that motion is the subject of this appeal.

The Bankruptcy Court did not permit Hill, Betts and Nash to prosecute the RICO for the Debtors In Possession, yet, in 1989, for the benefit of the Creditor's Estate.

The Bankruptcy rulings throughout the history of this case have clearly not been based "on the law" and "justified relief". The Bankruptcy Court was reversed too many times. Over 36 appeals have been taken from the Bankruptcy Orders. Five {5} Bankruptcy Judges have been assigned to this case. Judge Parente resigned from the bench, January 31, 1988, after being charged with "Judicial Misconduct" before the Judicial Counsel; Judge Holland was reversed and ordered removed from this case. -"The March 22, 1988 decision of Judge Holland is reversed ... The Chief Bankruptcy Judge is directed to assign another Bankruptcy Judge to hear the case."- {Order by Judge Korman dated May 11, 1988, Exhibit 10 to Brief on appeal}. Judge Duberstein recused himself from this case during the pendensey of an appeal taken from his denial to recuse himself on the grounds of - judicial impropriety - {Exhibit Q in APPENDIX TO BRIEF OF APPELLEE GENERALE BANK NEDERLAND, N.V.}. Judge Conrad was removed

from presiding on appellant's motion, which sought abandonment of the RICO to him "personally," by Judge Korman in a *sua sponte* order dated September 27, 1996, {Exhibit 13, last two pages, to my Brief on appeal}, because, "he [Judge Conrad] has indicated repeatedly, and contrary to my prior ruling and that of the Court of Appeals, that RICO causes of action may not be abandoned, even if Mr. Miller's request could otherwise be granted" ... I see no point in referring this application to Judge Conrad again." On November 13, 1996, Judge Conrad signed an order "this case be and is hereby referred to the Clerk of the Court for reassignment to another Bankruptcy Judge" {Exhibit 14 to my Brief on appeal}. On November 14, 1996, Judge Duberstein signed an order "that this case be and is hereby reassigned to Bankruptcy Judge Stan B. Bernstein" {Exhibit 15 to my Brief on appeal}. Judge Bernstein the fifth {5th} presently sitting on this case, entered a *sua sponte* order on December 28, 1998, enjoining appellant from communicating through telephone, fax or any other median, with the Bankruptcy Court or the Clerk's office, clearly violating appellant's Constitutional Right to due process of the law. Judge Korman, on appeal, vacated Judge Bernstein's order by order dated November 8, 1999, entered on the district docket as entry #27 on November 10, 1999. The overview of the history of this case compels the inescapable conclusion that the Bankruptcy Court was concerned "that he [Miller] shouldn't get the suit" as Judge Calabresi, so eloquently, pointed out at the Hearing of January 11, 2000, page 5, of the transcript, and I quote:

> "there were a whole series of different conditions, [set for Miller to meet in order for him to get the abandonment] for example, the determination of a value and so on, and as they get met, other conditions get suggested. And behind it there is a

generalized suggestion that Mr. Miller is a pain and that he shouldn't get the suit because he is a pain. But is not, as far as I know, *the law*". {emphasis added}.

FIRST REASON

POINT I.

The Court lacked jurisdiction to issue an order, *sua sponte, without the lower courts having made any finding or ruling on this question,* to enjoin appellant to prosecute a fraud claim "on his behalf" ... "or in any other capacity" wherein appellant alleges that he has standing to bring the claim, because he was the only party whom defendants aimed to injure. This matter did not reach the Court on appeal.

POINT 2.

Even if the matter would be before the Court, The Court overlooked the fact and the ruling of the Second Circuit, that in a particular case, as this, where the appellant alleges that he is not merely a creditor, but is the party whom the defendants aimed to injure, appellant has standing.

POINT 3.

The Court accepted the new conditions set, and the new findings made, by the district court, to deny abandonment, and this Court affirmed on those grounds. But the district court lacked jurisdiction to do so.

These rulings constitute a manifest injustice, and violates and denies the appellant his right to due process of

the law under The Constitution Of The United States Of America.

POINT I.

The Court lacked jurisdiction to issue an order, *sua sponte, without the lower courts having made any finding or ruling on this question,* to enjoin appellant to prosecute a fraud claim "on his behalf" ... "or in any other capacity" wherein appellant alleges that he has standing to bring the claim, because he was the only party whom defendants aimed to injure. This matter did not reach the Court on appeal. This constitutes a manifest injustice, and violates and denies the appellant his right to due process of the law under The Constitution Of The United States Of America.

The Court, in its Order dated June 26, 2000, page 7, line 24, ruled, and I quote:

> Under our ruling, appellant is not entitled to prosecute the claim and may not seek to do so—on his behalf, on the debtor's behalf, or in any other capacity, {emphassis added}

The Court lacked original jurisdiction to rule *sua sponte* that "appellant is not entitled to prosecute the claims and may not seek to do so - on his behalf,.....or in any other capacity" {emphassis added}, absent any rulings of the lower courts on this question. No court ever addressed this question.

Appellant sought this exact relief as an alternative relief in the motion, dated July 31, 1996, for abandonment, before Judge Korman.

The motion read:

> and in the third alternative, for an order pursuant to Fed. R. CIV. 15{a} permitting the amendment of the complaint to restore Eliezer Miller as plaintiff. {Exhibit 13, page 2, to my Brief on appeal dated August 17, 1999}.

The affidavit in support of my motion read:

> or in the third alternative, I respectfully request that pursuant to Fed. Civ. P. 15{a} the Court grant me permission to amend the complaint to its original caption restoring Eliezer Miller as plaintiff. I will retain counsel of 'equal competence' acceptable to this Court to prosecute and this case to trial.
>
> As the Courts held, a shareholder who suffers a particularize injury may sue individually. Grafman. 743 F. Supp. at 549 Where fraudulent misconduct was specifically aimed at the creditor filing suit, he has standing. Bankers Trust C. v. Rhoedes, 859. F2d 1097 {2d Cir. 1988}

{ELIEZER MILLER'S RESPONSE TO THE SUPPLEMENTATION, dated March 28, 2000, page 22}

On August 6, Judge Korman endorsed the face of the motion stating "The motions are denied." On September 17, 1996, upon appellant's motion for clarification, Judge Korman signed an order explaining that he denied the motions because they were "proceedurally inappropriate". The order read:

> The application of E. Miller to abandon the RICO cause of action to him is proceedurally inappropriate in the context of an appeal from the ruling of the Bankruptcy Court which was before and on which I have already ruled. Accordingly, it is denied. {Exhibit 13, page 4, to my Brief on appeal, dated August 17, 1999}

On September 18, 1996, appellant filed another motion before Judge Korman to abandon the RICO. On September 27, 1996, Judge Korman signed an order referring the motion to the Bankruptcy Court directing the court to determine whether appellant "complied with the standard set out [for abandonment] in the Summary Order of the Court of Appeals dated January 24, 1996. Pp. 6-7". {Exhibit 13, page A-84, to my Brief on appeal}

On January 29, 1999, Bankruptcy Judge Bernstein signed an order {i} denied abandonment of the RICO to the appellant "personally" as creditor or shareholder. {ii} denied appellant to prosecute for the benefit of the estate as a fiduciary. {iii} ordered that the RICO does not revest in the debtor, but did not deny abandonment to the debtors. Judge Korman affirmed. This appeal followed.

The question whether appellant may file a complaint in his own name since he alleges that the defendants aimed specifically to injure him, was never heard by any court, although appellant asked for this specific relief, as an alternative relief in his motion for abandonment as explained above. No court ever addressed this issue.

This Court lacks original jurisdiction to make such determinations. The issue did not reach this Court on appeal.

Appellant respectfully further submits that the Court reconsider its ruling, in consistence with its own prior ruling on my previous appeal, case #96 5116, In Re: Interpictures, Inc., Summary Order dated July 25, 1997, page 6 {Exhibit 4 to Brief on appeal}, which states, and I quote:

> "We deny Miller's motion for an order abandoning the RICO claim to him for similar reasons ... We lack jurisdiction [where original jurisdiction lies with the lower courts] to issue such orders.";

Likewise, on my original appeal, case #95 5042, In Re: Interpictures, Inc., order dated January 24, 1996, page 4, {Exhibit 4 to brief on appeal} the Court stated:

> Our standard of review is the same as that which the district court exercises over the bankruptcy court's decision: we accept the bankruptcy court's findings of fact unless clearly erroneous, and we review its legal conclusions *de novo*."

POINT 2.

Even if the matter would be before the Court, The Court overlooked the fact and the ruling of the Second Circuit, that in a particular case, as this, where the appellant alleges that he is not merely a creditor, but is the party whom the defendants aimed to injure, appellant has standing.

I further respectfully request that the Court reconsider its ruling that:

> "Appellant's status as a creditor to the debtor does not give him ... a possessory interest in this claim" page 6 lines 9-11. That is correct.

But, appellant respectfully submits that the Court overlooked the fact and the law that in this particular case, the appellant is not merely a creditor, but, is the

> "only party whom the defendants specifically aimed to injure as demonstrated in the complaint, and am entitled to have that property abandoned to me.
>
> 'Where fraudulent misconduct was specifically aimed at the creditor filing suit, he has standing.' Bankers Trust C. v. Rhoades, 859, F2d 1097 {2d Cir. 1988." This is a quote from appellant's "RESPONSE TO THE SUPPLEMENTATION" dated March 28, 2000, page 17, par. 4.

Since pursuant to the holding in this Circuit appellant has standing in this cause of action, he, for the same reason holds a "possessory interest" in the RICO and therefore it should be abandoned to him and the Court should not permit the defendants to "escape liability".

POINT 3.

The Court accepted the new conditions set and the new findings made, by the district court, to deny abandonment, and this Court affirmed on those grounds. But the district court lacked jurisdiction to do so.

The Court, in accepting the district court's new condition that it set for abandonment, - holding of a "possessory interest" -, and accepting its finding of fact that appellant does not hold a "possessory interest" in the Rico claims, and affirming the district court on those specific grounds, is a manifest injustice, and violated and denied the appellant his right to due process of the law, under The Constitution Of The United States Of America. This Court did not, and could not, ask the district court to make a finding of fact, whether appellant holds a "possessory interest" in the Rico claim; according to this Court's own ruling on my prior appeal, case #96 5116, In Re: Interpictures, Inc., in order dated July 25, 1997, page 4, {Exhibit 4 to my Brief on appeal} and I quote:

> Miller also appeals from the district court's denial of his motion invoking that court's original jurisdiction to abandon the RICO and other claims. Under 18 U.S.C. section 1334{a}, the district courts have original and exclusive jurisdiction under Title 11. Section 157 enables district courts to refer cases under Title 11 to bankruptcy judges for the district. Once a case has been so referred, the district court has jurisdiction to hear the appeals. 28 U.S.C. section 158{a}. In the instant case, the district court had referred its "original and exclusive" jurisdiction to the bankruptcy court and merely retained jurisdiction to hear appeals from the bankruptcy court's orders. Therefore, the relief Miller sought was unavailable in the district court and his motion was properly denied." {EA}

The determination whether a party has standing, -

"possesory interest", in a bankruptcy proceeding is a core proceeding whose original jurisdiction lies with the bankruptcy court. Therefore, only the bankruptcy court may make that determination in the first instance, unless the district court withdraws the reference to the bankruptcy court, under 28 U.S.C. 157{d}.

SECOND REASON

The Court overlooked the fact that if affirmed an order that does not exist - denial of abandonment to appellant -. The district court conceded that it made a mistake, and affirmed the portion of the bankruptcy court's order which denied abandonment to the *debtors*, instead of affirming the portion of the bankruptcy court's order which denied abandonment to the *appellant*.

This Court, in its order dated June 26, 2000, page 4, par. 1, states that:

> "On remand, the district court gave alternative reasons for denying abandonment to the RICO claim to appellant...appellant lacks a possessory interest in the claim."

POINT I.

I respectfully point out to this Honorable Court that the order dated May 28, 1999, entered June 4, 1999, the only order which is subject to this appeal, reads denial of abandonment to the *debtors*, therefore the Court cannot affirm this order to deny abandonment to the *appellant*. Especially when The district court conceded that it made a mistake, and affirmed the part of the bankruptcy court's order which denied abandonment to the *debtors*, instead of

affirming the part of the bankruptcy court's order which denied abandonment to the *appellant.*

I quote from the district court's supplementation, dated March 9, 2000, page 7:

> The order was not only cryptic, it also misdescribed the part of the order of the Bankruptcy Court that was being affirmed ...the abandonment to the debtors, 'rather than to Mr. Miller personally...
>
> I withdraw the order of May 28, 1999, which was not drawn with the requisite care, and affirm the order of the Bankruptcy Court for the reasons stated here.

The district court order entered June 4, 2000, from which I appealed reads:

> "[t]he part of the [bankruptcy court] order that directed *that the RICO claim not be abandoned to the debtors is affirmed* for substantially the same reasons set forth in my order August 3, 1994, affirming the denial of the application to abandon that asset to *the debtors.*

POINT 2.

In the Court's Summary Order dated February 3, 2000, The Court ruled: page 2, par. 2,

> this matter is directed to the district court for supplementation of the record. This panel retains jurisdiction so that we may dispose of

> this appeal after receiving such additional facts as are found by the district court.

page 3, par. 3,

> On the present record we are unable to determine on what ground or grounds the courts below denied Miller's motion. The district court stated that "[t]he part of the [bankruptcy court] order that directed *that the RICO claim not be abandoned to the debtors is affirmed* for substantially the same reasons set forth in my order August 3, 1994, affirming the denial of the application to abandon the asset to *the debtors*.

page 4, par. 2,

> But on the current record it is impossible for us to review this latest decision to deny abandonment because we cannot be sure on what factual or legal grounds that decision *was* based

page 4, par. 4,

> We request that the district court set forth in greater detail its justification for denying Miller's motion for abandonment.

I respectfully submit that this Court's Summary Order, that "the matter is directed to the district court for supplementation of the record" requesting "that the district court set forth in greater detail its justification", "on what factual or legal grounds that decision *was* based" did not, and could not, give the district court jurisdiction to give

any new grounds that were not already on the record, set new conditions, make new findings - that appellant does not hold a "possessory interest" as a "justification for denying Miller's motion for abandonment." It did not, and could not, give the district court jurisdiction to enter any orders on appellants appeal.

The Court only asked whether there are any additional facts or findings made by the bankruptcy court or the district court, that are on the present record, like "some pretty specific findings of improprieties" {Transcript Hearing January 11, 2000, page 5, line 8} that would warrant a denial of abandonment to appellant.

There is no provision, under any Title of the U.S. Code, to empower the Circuit Court to refer a matter to the district court. Absent such provision, the district court lacks jurisdiction to make any new conditions, findings, or enter orders. Section 157{d} of Title 28, only enables district courts to refer cases under Title 11 to bankruptcy judges.

The district court, {i} lacked jurisdiction to issue an order to withdraw its own order from which an appeal was already taken. Because the jurisdiction on that matter is retained by this Court, and without this Court granting appellant permission to withdraw his appeal, this Court, retains the jurisdiction. Where the district court concedes that it made a mistake, as in this instance, this Court should either affirm, reverse, or vacate the order, whichever the Court finds is proper. But the district court cannot act as an appellate court to self - review its own order, and cannot yet issue further orders in an appeal before this Court.

The district court lacked jurisdiction:

(i) to set a new condition, - requiring "possessory interest",

(ii) to make a new finding - that appellant lacks a "possessory interest" -

(iii) to enter a new order of denial on appellant's appeal, before a higher Court.

(iv) to withdraw its own order, from which an appeal was taken, and argued.

(v) give grounds for denial of abandonment that were not on the record.

I filed a timely appeal from the March 9, order. And I requested a Hearing. This Court did not assign a Case # to my appeal, did not issue a briefing schedule, and did not set a Hearing. Allowing the district court, during the pendensey of an appeal, to set new conditions, make new findings, give new grounds, all outside of the record, not from the bankruptcy or district court records, as a basis to deny appellant abandonment, and to enter a new order to deny appellant abandonment, and this Court's affirmance of the new order based on these new conditions and findings, and not allowing appellant to be heard before this Court, on the district court's requirement of new condition, new finding and new order, constitutes a manifest injustice, and clear violation of appellant's due process of the law, under The Constitution Of The United States Of America.

Factually it is only on the first order of the district court, entered June 4, 1999 upon which this Court has jurisdiction. That is the order from which I appealed. And since,

(i) that order reads that abandonment is denied to the "debtors", this Court cannot affirm a denial to the "appellant", especially when the district court concedes that it made a mistake. It affirmed the wrong portion of the order of the bankruptcy court which denied abandonment to the debtors instead of affirming the portion of the order of the bankruptcy court which denied abandonment to the appellant. Hence, there is no written order of the district court affirming a denial of abandonment to the RICO to the appellant, which this Court can affirm.

(ii) The court cannot affirm the second order, of the district court dated March 9, 2000, which did deny abandonment to the appellant because:

(a) The district court lacked jurisdiction to amend, modify or enter any orders in the case.

This Court clearly stated, page 2, "This panel retains jurisdiction so that we may dispose of this appeal" (emphasis added).

(b) This Court specifically requested that the district court explain in greater detail "on what factual or legal grounds *that decision was based*." The word "was" is in the past tense.

(c) This Court requested "that the district court set forth in greater detail its justification for denying Miller's motion for abandonment" in "that decision".

Therefore, I respectfully request that the Court grant my Petition.

THIRD REASON

The Court has overlooked the fact that it is not possible for any party in interest to hold a "possessory interest" in a cause of action that arose from the fraud committed during a Bankruptcy Proceeding and therefore the Court's "rationale" for requiring appellant to be a holder of a "possessory interest" is misapplied, therefore the district court clearly erred, because it imposed an impossible requirement, which is only applicable to other estate properties.

The Court in its order dated June 26, 2000 states the following on page 5 line 19:

> The rationale for this rule is that once the debtor's property is abandoned in bankruptcy, the property should be treated as though no bankruptcy proceeding had occurred and therefore revert to the party that held a pre-petition interest in it. ... 'Following abandonment, whoever had the possessory right to the property at the filing of bankruptcy again reacquires that right.'

According to the Court's own interpretation of the rule, the rule can not apply in a case where the facts and events giving rise to the various claims arose at the inception of the bankruptcy or during the bankruptcy.

Here, no party can possibly have a possessory interest or a "pre-petition interest" because the fraud was committed at the inception of the bankruptcy and

continued thereon. So according to the district court's reasoning, any causes of action which arose at the inception of a bankruptcy or during the proceedings can never be abandoned. That is not so. Because this court in its Summary Order dated January 24, 1966 page 6, In Re Interpictures, on my first appeal, held to the contrary and I quote;

> On a motion for abandonment, the *only* issue is 'whether there is a reason that the estate's interest in the property should be preserved or, instead, whether the property is so worthless' to the estate that it *should* be removed.
>
> When the asset in question is a cause of action, a would-be plaintiff cannot bring suit until the trustee disposes of the claim. In Re Ira Haupt & Co., 398F.2d 607, 613 (2d Cir. 1968). Clearly, a trustee 'may not simply do nothing and thereby permit a possibly valid claim to evaporate and a defendant to escape liability.

Additionally, W.L. Norton, Norton Bankruptcy Law and Practice, 2d, Sec. 53:1, concluded as follows: "In the case of pure intangible property that is not possessable, abandonment should be to the person with preeminent rights under the nonbankruptcy law". Here, appellant is the only party who has alleged from the inception of this false bankruptcy that the defendants, who fraudulently induced this bankruptcy, specifically aimed to injure the appellant, to wrest from the appellant his 28.4% equity interest in the public company, as described in the RICO complaint. Therefore appellant seeks "justified relief" - his Constitutional right to prosecute to recover his damages.

The Court in its Summary Order dated February 3, 2000 page 3, acknowledged that the allegations of fraud arose during the bankruptcy, and I quote:

> In 1987, based on allegations of fraud by Miller the bankruptcy court appointed Edward P. Frey as the operating trustee. Miller believing that fraud was continuing in the administration of the bankruptcy estate, commenced a civil RICO action."

The RICO action alleges that Lee Steiner, Esq. and Michael Zweig, Esq., senior partners in Loeb & Loeb (i) signed and filed a knowingly false Petition Of Involuntary Bankruptcy Chapter 7, against Interpictures, Inc. (ii) filed three knowingly false and perjuriously sworn to affidavits. It further alleges that Mr. Frey with the aid of and in conspiracy with Mr. Steiner, Mr. Zweig among others defrauded the estate of its entire assets. Interpictures, Inc. was a public company with a capitalization value of approximately $175 million, based on the price of its shares. In addition all of the debtors' officers were named defendants in the RICO.

Mr. Frey, as operating trustee in Chapter 11, did not prosecute the RICO because he was a named defendant and was compelled to resign on August 31, 1988. I then became president of the debtors in possession. At that time, the only asset left in the estate was the RICO claim. I retained Hill, Betts and Nash as special counsel specifically to prosecute the RICO for benefit of the bankrupt estate. (Exhibit 20 to my Brief dated August 17, 1999). But Judge Conrad denied their retention. Although Judge Korman reversed him, Judge Conrad had already ordered the case converted to Chapter 7, and appointed Jeffrey L. Sapir, Esq. as Trustee, thereby preventing me to pursue the claims for

the benefit of the estate. Mr. Sapir refused to prosecute the claims. Judge Conrad signed an order dated September 4, 1991 "the trustee is directed to dismiss and discontinue with prejudice the RICO action" {Exhibit 21 to my Brief dated August 17, 1999}. I appealed and Judge Korman reversed and allowed the trustee to withdraw the RICO only without prejudice. {Exhibit 22 to my Brief dated August 17, 1999}.

Because no party in interest can possibly hold a "pre-petition {possessory} interest" in a cause of action that did not yet exist before the filing of the false Petition In Bankruptcy, and since all causes of action which arise post-petition are the property of the debtors estate, then, likewise, no party in interest can possibly be a holder of a "possessory interest" in such claims. Therefore, to require appellant to hold a "possessory interest" in a cause of action, in a bankruptcy estate is an impossible requirement.

I respectfully request that the Court find that the district court's denial of abandonment on the grounds that appellant lacks a "possessory interest" in the RICO is misapplied, and the Court should invoke its ruling in this case that "trustee may not simply do nothing and thereby permit a possibly valid claim to evaporate and a defendant to escape liability", and compel abandonment of the RICO to the appellant.

FOURTH REASON

The Court held in this case that "When the asset in question is a cause of action" the trustee must abandon and not "permit a possibly valid claim to evaporate and a defendant to escape liability". Therefore, the district court clearly abused its discretion by relying on the rationale of

the lower Bankruptcy Courts, rather that ruling according to this Court's holding in this case - "Law Of The Case"

The district court clearly abused its discretion to deny abandonment in relying on a rationale taken from the lower bankruptcy courts, - lack of "possessory interest" in the RICO - rather than ruling according to this Court's holding, in its order dated January 24, 1996, on my appeal in this case, In Re; Interpictures, Inc., which is the "law of the case" that here, the "trustee may not simply do nothing and thereby permit a possibly valid claim to evaporate and a defendant to escape liability". Therefore the Court should reconsider its ruling and find that the district court clearly abused its discretion, and compel abandonment to appellant.

FIFTH REASON

The Court overlooked its own holding in this case that "When the asset in question is a cause of action, ...a trustee 'may not simply do nothing and thereby permit a possibly valid claim to evaporate and a defendant to escape liability"

The Court in its affirmance "that the district court did not abuse its discretion in denying abandonment to appellant on the ground that he lacks a possessory interest in the claim" page 1, lines 25-28, has overlooked its own ruling in this case, in its Order dated January 24, 1996, page 6, on my prior appeal, in this case, {In Re: Interpictures, Inc. USCA 95 5042}, that held that here the defendants should not be allowed to "escape liability", and I quote:

> On a motion for abandonment, the *only* issue is 'whether there is a reason that the estate's interest in the property should be preserved

> or, instead, whether the property is so worthless' to the estate that it *should* be removed.
>
> When the asset in question is a cause of action, a would-be plaintiff cannot bring suit until the trustee disposes of the claim. In Re Ira Haupt & Co., 398F.2d 607, 613 {2d Cir. 1968}. Clearly, a trustee 'may not simply do nothing and thereby permit a possibly valid claim to evaporate and a defendant to escape liability.

In the Ira Haupt case the Court ruled, likewise, and I quote:

> While a trustee has a wide variety of choices as to the claims of the bankrupt - to prosecute, allow another to prosecute on mutually satisfactory terms, sell or abandon, he may not simply do nothing and thereby permit a possibly valid action to evaporate and a defendant to escape liability.

The Court, on my previous appeal, in its order dated January 24, 1996 page 6 par. 2, set out the standard for abandonment and that became the "law of this case". The Court explained that in the case In Re: Ira Haupt & Co., the Court did reverse the district court's denial for abandonment because and I quote:

> This was possible in Ira Haupt, because the plaintiff counsel had submitted copies of the complaints to the trustee alleging the specific facts and events giving rise to the various claims. Id. at 609-10. Here, Miller has done nothing of the kind.

The Court found that the only required factor missing here that was present in the Ira Haupt Case to meet the standard set by this Court to compel abandonment was to submit a copy of the complaint to the trustee. Therefore, I respectfully request that the Court reverse and invoke its holdings in this case and not permit the defendants to "escape liability".

SIXTH REASON

The Court affirmed the district court, but overlooked the fact that, although appellant requested, to be granted by his right for oral argument, because the district court set a new condition, made a new finding, and on those grounds issued a new order and denied abandonment to appellant for lack of "possessory interest" - the Court did not conduct any Hearing. This constitutes a violation of my Constitutional rights and denies me my right to due process of the law.

I respectfully ask that the Court should allow me my due process rights and to give me an opportunity to be heard on the question of "possessory interest". At the Hearing before the Court on January 11, 2000, I was not heard on this question because the district court had not yet given that reason nor had it made that finding until March 9, 2000. I filed a "RESPONSE TO THE SUPLEMENTATION" on March 28, 2000, and I requested a Hearing.

The Court affirmed on those grounds, without allowing appellant his Constitutional Rights to due process of the law, to be heard in oral argument.

Therefore I respectfully request that the Court set a date certain for a Hearing.

SEVENTH REASON

The Court, by affirming the district court, and by further ruling that "appellant is not entitled to prosecute the claims and may not seek to do so - on his behalf, on the debtor's behalf, or in any other capacity" effectively condones the bankruptcy fraud committed, and the lower court's violation and denial of appellant's Constitutional Rights to due process of the law, which were continuously denied throughout the bankruptcy proceedings, as memorialized in my 22 page Brief on appeal before Judge Korman filed by my Counsel Snitow & Pauley on August 22, 1994 {Last exhibit in Exhibit 6 to my Brief on this appeal dated August 17, 1999}.

The Court itself observed that there exists a concerted effort in the lower courts, "that he {Miller} shouldn't get the suit" I quote from the record of the Hearing:

> JUDGE CALABRESI: But there were a whole series of different conditions, for example, the determination of a value and so on, and as these get met, other conditions get suggested. And behind it there is a generalized suggestion that Mr. Miller is a pain and that he shouldn't get the suit because, {page 5}

The district court also held that appellant's allegations "suggest the presence of a fraud on the Bankruptcy Court that should not go undetected because of justified irritation with Mr. Miller" {Judge Korman order dated April 2, 1991, page 5. Exhibit 11 to my Brief on appeal

dated August 17, 1999). I quote the relevant portion of Judge Korman's order as follows:

> The allegations made by Mr. Miller in his memorandum, which appear from the annexed summary of the Examiner's Report to warrant further investigation, go beyond the question of recovering assets for the creditors. If the allegations are true, as Chief Judge Duberstein recognized in his commendable conduct of these proceedings, they suggest the presence of a fraud on the Bankruptcy Court that should not go undetected because of justified irritation with Mr. Miller (emphasis added).

On October 21, 1992, in its order, page 2, (Ex. 22 to my Brief on appeal dated August 17, 1999) the district court again recognized the "desire of the Bankruptcy Court to rid itself of Mr. Miller" and stated that "it is difficult to justify as a matter of law." The district court therefore reversed Judge Conrad's order dated September 4, 1991 that "ORDERED" that "the trustee is directed to dismiss and discontinue with prejudice the RICO action" (Judge Conrad's order is Exhibit 21 to my Brief on appeal dated August 17, 1999)".

I quote Judge Korman's order

> A dismissal with prejudice has the effect of abandoning the claim (and any related claim that could have been raised as part of the RICO case) to the defendants in that action, instead of the debtor. While it reflects an understandable desire of the Bankruptcy Court to rid itself of Mr. Miller, it is difficult

> to justify as a matter of law. {emphasis added}

Throughout the entire bankruptcy proceedings, the Bankruptcy Court did not permit me to take any depositions from any of the defendants and all of the subpoenas I obtained for the testimony of the defendants were all quashed *sua sponte* in the Bankruptcy Court by each judge that was assigned to this case.

The charges of fraud and racketeering contained in the complaint are most serious and were prepared by the law firm of Snitow & Pauley after a thorough review of the bankruptcy file. The lawsuit seeks $50 Million trebled, in damages. William H. Pauley is now The Honorable William H. Pauley a United States District Judge in the Southern District of New York. {Copy of complaint is in Exhibit 5 of my Brief on appeal dated August 17, 1999}.

A JUST DETERMINATION OF THIS CASE IS IMPORTANT TO THE PUBLIC. It is equally important to the Courts, because they allege the presence of a fraud on the Bankruptcy Court that should not go undetected and permitting defendants to "escape liability".

This Court stated on page 6 of its order dated June 26, 2000, and I quote:

> Finally, appellant's conduct in these proceedings has led to understandable concern that he might use this claim more as a means of harassment than of obtaining justified relief.

I respectfully wish to point out to this Honorable Court;

{i} I did not draft the complaint, *pro se*, Snitow & Pauley did. I quote from Snitow & Pauley's letter to Judge Korman dated March 7, 1996 {attached to the complaint in Exhibit 5 to my Brief on appeal dated August 17, 1999}:

> pursuant to your Honor's order dated April 11, 1995, I reviewed the Interpictures, Inc. bankruptcy matter. Based on that review my firm prepared a draft complaint for the benefit of the Interpictures bankruptcy estate. A copy of the draft complaint is enclosed. Mr. Miller is determined to press the claims to trail {ea}

{ii} The Bankruptcy Court's findings of misconduct and the impositions of monetary sanctions imposed against me of 1,000.00 and $500.00 and the Bankruptcy Court's further finding me in contempt of court and imposing a $5,000.00 fine and $1,000.00 for every day the fine is not paid, *were all reversed* and the citation for contempt was vacated by Judge Korman on my appeal. {Judge Korman order dated July 26, 1993, Exhibit 12 to my Brief on appeal dated August 17, 1999.}

The Bankruptcy Court continuously throughout the proceedings denied me my constitutional rights to due process of the law. The Bankruptcy Court's conduct in these proceedings was well described by this Honorable Court on the record of the Hearing January 11, 2000 and I quote:

> JUDGE CALABRESI: But there were a whole series of different conditions, for example, the determination of a value and so on, and as these get met, other conditions get suggested. And behind it there is a generalized suggestion that Mr. Miller is a pain and that

> he shouldn't get the suit because he is a pain. But is not, as far as I know, the law, unless there are at least some pretty specific findings of improprieties or other things. And all of those seem to have been dismissed (emphasis added)

The Court overlooked its own acknowledgment in its Summary Order dated February 3, 2000, page 3, that my allegations were credible and were not used to harass and I quote:

> "In 1987, based on allegations of fraud by Miller the bankruptcy court appointed Edward P. Frey as the operating trustee. Miller believing that fraud was continuing in the administration of the bankruptcy estate, commenced a civil RICO action."

The RICO action alleges that Lee Steiner, Esq. and Michael Zweig, Esq.,/Loeb & Loeb (i) signed and filed a knowingly false Petition Of Involuntary Bankruptcy- Chapter 7, against Interpictures, Inc. (ii) filed three knowingly false and perjuriously sworn affidavits. It further alleges that Mr. Frey with the aid of and in conspiracy with Mr. Steiner, Mr. Zweig among others defrauded the estate of its entire assets. Interpictures, Inc. was a public company with a capitalization value of approximately $175 million, based on the price of its shares.

Mr. Frey, as operating trustee in Chapter 11, did not prosecute the RICO because he was a named defendant therein, and was compelled to resign. I, then because president of the debtors in possession. At that time, the only asset left in the estate was the RICO claim, I retained Hill, Betts and Nash as special counsel specifically to

prosecute the RICO for benefit of the bankrupt estate. (Exhibit 20 to my Brief dated August 17, 1999). But Judge Conrad denied their retention. Although Judge Korman reversed. Judge Conrad had ordered the case converted to Chapter 7, and appointed Jeffrey L. Sapir, Esq. As Trustee, thereby preventing me to pursue the claims for the benefit of the estate. Mr. Sapir refused to prosecute the claims. Judge Conrad signed an order dated September 4, 1991, "the trustee is directed to dismiss and discontinue with prejudice the RICO action" (Exhibit 21 to my Brief dated August 17, 1999). I appealed and Judge Korman reversed and allowed the trustee to withdraw the RICO only without prejudice. (Exhibit 22 to my Brief dated August 17, 1999).

The Court's denial of abandonment to me effectively violates my Constitutional Rights under the Sixth Amendment To The Constitution Of The United States of America and denies me my right to due process of the law, and condones the bankruptcy fraud committed by the defendants, and permits the defendants to "escape liability", contrary to this Court's ruling in this case, that, that should not be permitted.

Therefore I respectfully ask that this Honorable Court grant all the relief sought above, and should not allow my Constitutional Rights to be violated and my right to due process of the law to be denied, and compel abandonment of the RICO claims to appellant, under 11 U.S.C. 554[d], and invoke this Court's holding that the defendants not be permitted to "escape liability", and not allow the "presence of a fraud on the Bankruptcy Court"; "should not go undetected".

Respectfully Submitted,

s/Eliezer Miller
Eliezer Miller, creditor, shareholder, appellant, *pro se*
455 Foster Ave.,
Brooklyn, New York 11230, Tel: 718 438-4776
July 18, 2000
Copies by First Class Mail to:
Gregory Schwed, Esq./Loeb & Loeb
345 Park Avenue. NY, NY 10154
Edward P. Frey, Esq. 132 Main St.,
PO Box 82, West Hampton, N.Y. 11978

Appendix 7 — Miller's Notice of Appeal Filed on March 31, 2000, from the District Court Order Dated March 9, 2000.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
_____X

IN RE:
INTERPICTURES, INC.
INTERPICTURES LISENCING CORP.
INTERPICTURES RELEASING CORP.

Debtors Chapter 7
_____X

Related Cases in USDC
87 CV 4211(ERK); 88 CV 1217(ERK); 90 CV 1940(ERK);
91 CV 3551(ERK); 93 CV 1267(ERK), 94 CV 1235(ERK);
96 CV 3233(ERK); 96 CV 4660(ERK); 99 CV 0533(ERK)

March 31, 2000
Bankruptcy Case Nos:
886-11827-288{SB}
886-12117-288{SB}
886-12079-288{SB}

NOTICE OF APPEAL, DESIGNATION OF RECORD, STATEMENT OF ISSUE FROM JUDGE KORMAN'S *sua sponte* ORDER DATED MARCH 9, 2000, WHICH AFFIRMED JUDGE BERNSTEIN'S AMENDED ORDER DATED JANUARY 29, 1999, THAT DENIED MY MOTIONS DATED JULY 31, 1996 AND SEPTEMBER 18, 1996 FOR ABANDONMENT OF THE RICO CAUSES OF ACTION TO ME "PERSONALLY" AS A CREDITOR PARTY IN INTEREST.

PLEASE TAKE NOTICE that Eliezer Miller, Creditor, Party In Interest hereby respectfully appeals from the order of the United States District Court For The Eastern District Of New York, {Korman J.} the Order dated March 9, 2000, which affirmed Bankruptcy Judge Bernstein's Amended Order dated January 29, 1999, which denied abandonment of the estates' RICO and fraud causes of action, to Eliezer Miller "personally" as a Creditor, Party In Interest under 11 USC 554[b].

On February 3, 2000, the UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT issued an Order that the District Court supplement the record and "set forth in greater detail its justification for denying Miller's motion for abandonment" in Judge Korman's order dated May 28, 1999.

On March 9, 2000, Judge Korman issued an order stating: "I apologize to the Court of Appeals for my cryptic order of May 28, 1999...I withdraw the order of May 28, 1999, which was not drawn with the requisite care, and affirm the order of the Bankruptcy Court for the reasons stated here."

DESIGNATION OF RECORD

APPELLANT designates the entire records in USCA Nos: 99 5055, 96 5116, 95 5042.

USDC 87 CV 4211{ERK}; 88 CV 1217{ERK}; 90 CV 1940{ERK}; 91 CV 3551{ERK}; 93 CV 1267{ERK}, 94 CV 1235{ERK}; 96 CV 3233{ERK}; 96 CV 4660{ERK}; 99 CV 0533{ERK}; and this Notice of Appeal.

STATEMENT OF ISSUES

1. Whether Judge Korman had jurisdiction to issue a substitute order to deny abandonment on March 9, 2000.

2. Whether Judge Korman's order should be vacated as proceeduraly improper, lacking jurisdiction to issue such order at that time.

3. Whether a cause of action may be abandoned to a party who does not have a "possessory interest" in the cause of action which he seeks abandoned to him.

4. Whether Eliezer Miller has a "possessory interest" in the RICO and related claims which he seeks abandoned to himself "Personally".

Respectfully Submitted,

s/Eliezer Miller
Eliezer Miller, Creditor, Shareholder,
Party In Interest, Appellant, *pro se.*

Copies by First Class Mail To:
P. Gregory Schwed, Esq.,/Loeb & Loeb;
Edward P. Frey, Esq.

Dated March 31, 2000

Appendix 8 — Miller's Letter to Clerk of District Court Dated April 3, 2000, Advising That District Court Refused to Accept $105.00 For Filing Fee on March 31, 2000.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
_____X

IN RE:
INTERPICTURES, INC.
INTERPICTURES LISENCING CORP.
INTERPICTURES RELEASING CORP.

Debtors Chapter 7

_____X

99 CV 0533(ERK)-Related Cases in USDC
87 CV 4211(ERK); 88 CV 1217(ERK); 90 CV 1940(ERK);
91 CV 3551(ERK); 93 CV 1267(ERK), 94 CV 1235(ERK);
96 CV 3233(ERK); 96 CV 4660(ERK); 99 CV 1044(ERK)

April 3, 2000
Bankruptcy Case Nos:
886-11827-288(SB)
886-12117-288(SB)
886-12079-288(SB)

RE: NOTICE OF APPEAL, DESIGNATION OF RECORD, STATEMENT OF ISSUE FROM JUDGE KORMAN'S *sua sponte* ORDER DATED MARCH 9, 2000, WHICH AFFIRMED JUDGE BERNSTEIN'S AMENDED ORDER DATED JANUARY 29, 1999, THAT DENIED MY MOTIONS DATED JULY 31, 1996 AND SEPTEMBER 18, 1996 FOR ABANDONMENT OF THE RICO CAUSES OF ACTION TO ME "PERSONALLY" AS A CREDITOR

PARTY IN INTEREST, that was filed on March 31, 2000, in the USDC, EDNY.

Marilyn Glenn, Chief Clerk,
United States District Court
Eastern District of New York
225 Cadman Plaza Ease
Brooklyn, New York 11201
April 3, 2000

Dear Marilyn;

On Friday, March 31, 2000, I filed the above appeal. The cashier refused to take $105.00 cash for the filing fee. The clerk said that it was not necessary because my original appeal {USCA #99 5055} of June 7, 1999, is still before the Court of Appeals.

I kindly request that the district court accept at least $5.00 for the District Court Filing Fee, and enter this appeal on the Docket Sheet, showing the filing of an appeal from Judge Korman's order dated March 9, 2000 and that the $5.00 filing fee of the district court was paid. I want to insure that the Federal Rules Of Appellate Procedure are met.

I Thank You for your consideration of this matter.

Very Truly yours,

s/Eliezer Miller
Eliezer Miller, Creditor, Shareholder, Party In Interest,
Appellant, *pro se*;
455 Foster Avenue
Brooklyn, New York 11230, Tel: 438-4776

Appendix 9 — Receipt for $5.00 Filing Fee Accepted on April 3, 2000

ACO2 8WEDA (Rev. 4-80) 230434

TRIPLICATE
RECEIPT FOR PAYMENT
UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF NEW YORK
at BROOKLYN

Fund		
6855XX	Deposit Funds	
604700	Registry Funds	
	General and Special Funds	
508800	Immigration Fees	
085000	Attorney Admission Fees	
086900	Filing Fees	
322340	Sale of Publications	
322350	Copy Fees	
322360	Miscellaneous Fees	
143500	Interest	
322380	Recoveries of Court Costs	
322386	Restitution to U.S. Government	
121000	Conscience Fund	
129900	Gifts	
504100	Crime Victims Fund	
613300	Unclaimed Monies	
510000	Civil Filing Fee (½)	
510100	Registry Fee	99 cv 0533

REG 01-83-00 09:44 %
DRAWER 1 illegible
illegible

NOTICE OF APPEAL illegible
006900

CASH $5.00

CASE REFERENCE:
99 CV 1044
RECEIVED FROM
Eliezer Miller

In re Interpictures, Inc.
et al.

DEPUTY CLERK illegible

Checks and drafts are accepted subject to collection and full credit will only be given when the check or draft has been accepted by the financial institution on which it was drawn.

*U.S. GOVERNMENT PRINTING OFFICE: 1999-510-464

Appendix 10 — United States Court of Appeals Summary Order dated January 24, 1996, on Miller's Original Appeal to the Court of Appeals. Circuit Judges McLauglin, Jacobs & Calabresi. (95-5042)

EDNY-bkny
94-cv-1235
Korman, J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 24th day of January one thousand nine hundred and ninety-six.

PRESENT: McLAUGHLIN, JACOBS, CALABRESI,
Circuit Judges.

APPEARING FOR APPELLANT: ELIEZER MILLER, pro se.

APPEARING FOR APPELLEES:

P. GREGORY SCHWED, Loeb and Loeb, New York, NY, For Credit Lyonnais Nederland, N.V.

ALEX MASSIS, pro se.

EDWARD P. FREY, pro se.

In Re: INTERPICTURES, INC.
INTERPICTURES LICENSING CORP.,
INTERPICTURES RELEASING CORP.,

Debtors.

****

ELIEZER MILLER,

Creditor-Appellant,

v. 95-5042

CREDIT LYONNAIS N.Y., CREDIT LYONNAIS NEDERLAND, N.V., ALEX MASSIS, JON KAUFMAN and JUSTIN MCMANUS,

Creditors-Appellees,

EDWARD FREY,

Trustee-Appellee.

Appeal from the United States District Court for the Eastern District of New York (Korman, Judge).

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York and was taken on submission.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court is hereby affirmed.

Eliezer Miller, pro se, appeals from an order of the United States District Court for the Eastern District of New York (Korman, J.) that affirmed an order of the Bankruptcy Court denying abandonment of a debtor asset pursuant to 11 U.S.C. § 554. For the reasons stated below, we affirm the judgment of the district court.

On November 6, 1986, Credit Lyonnais Bank Nederland, N.V. ("Credit Lyonnais") filed involuntary Chapter 7 bankruptcy petitions against the debtors, Interpictures, Inc. (a film distribution business) and its wholly-owned subsidiaries, Interpictures Licensing Corp. and Interpictures Releasing Corp. (collectively, "Interpictures"), pursuant to 11 U.S.C. § 303. On December 16, 1986, Interpictures petitioned to convert these cases to voluntary bankruptcy under Chapter 11. Miller claims he is a shareholder of Interpictures by virtue of an alleged exercise of a stock option; however, Alex Massis, an apparent principal of Interpictures, claims that Miller has no rightful ownership interest in the company. On March 11, 1987, Miller moved for the appointment of a Chapter 11 operating trustee, alleging that former principals of Interpictures had engaged in acts of fraud. The bankruptcy court subsequently appointed Edward P. Frey as operating trustee.

In September 1987, Miller commenced a civil RICO action in the Eastern District of New York, charging that

there was continuing fraud in the administration of the bankrupt estate. In an order dated October 21, 1992, the district court dismissed that action pending the outcome of this bankruptcy case. The RICO claim was filed against, inter alia, Frey, Credit Lyonnais and their counsel, Loeb and Loeb, and Massis. This RICO claim is the subject of this appeal; Miller asserts that it is an asset that should be abandoned to the debtors, so that he, as majority shareholder, can pursue it on their behalf.

The bankruptcy court attempted to determine whether the RICO claim had merit, and thus value, but the court had difficulty making this assessment because of what it described as Miller's non-cooperation. The bankruptcy court conducted a public auction for the claim, with a minimum bid of $20,000, but no bids were received. On September 4, 1991, the bankruptcy court, based on a proposed settlement order of the trustee, directed that the trustee dismiss the RICO action with prejudice, not proceed with collection of the accounts receivable, and close the estate. On October 21, 1992, the district court modified the bankruptcy court's order, in part by ordering that the dismissal of the RICO claim be without prejudice.

On March 1, 1993, Miller filed a motion in the bankruptcy court to compel abandonment of the RICO claim, which was opposed by the RICO defendants. On March 17, 1993, the bankruptcy court denied Miller's motion to abandon, holding that because the RICO claim had been subject to auction and had no value, the asset had been administered and no longer was a part of the estate. On July 13, 1993, the district court reversed, stating that the bankruptcy court's reliance on the nexus between the auction and abandonment was erroneous. The district court directed the bankruptcy court to abandon the property to

Interpictures, unless another basis existed for the denial of Miller's motion.

On March 3, 1994, the bankruptcy court, in a Memorandum of Decision detailing Miller's uncooperative and abusive behavior in this litigation, again denied Miller's motion for abandonment, this time on equitable grounds. Miller appealed. Following a hearing on June 10, 1994, the district court, by an order dated August 3, 1994, affirmed the bankruptcy court, holding that, under the equitable powers conferred by 11 U.S.C. § 105(a), Miller's failure to cooperate in the administration of the asset for the benefit of the estate prevented him from stating a valid claim.

On August 23, 1994, Miller moved for reconsideration. In an order entered April 17, 1995, the district court denied relief, noting that Miller could have purchased the RICO action at auction for $20,000, or could have prosecuted the claim for the benefit of the estate. The court further noted that Miller "remains free to file an application for permission to prosecute" the claim for the benefit of the estate. The court found that it would be "improvident" to order abandonment because Miller had not prepared "a coherent document outlining the nature of" the RICO claim. This appeal followed.

This Court has jurisdiction to hear appeals from final judgments, orders and decrees rendered by the district court in connection with bankruptcy appeals. 28 U.S.C. § 158(d). Finality is construed more liberally in bankruptcy proceedings, because such proceedings often continue over an extended time; thus, "orders that finally dispose of discrete disputes within the larger case" may be appealed to this Court. In re Prudential Lines, Inc., 59 F.3d 327, 331 (2d Cir. 1995) (internal quotation marks and citation

omitted). A "dispute" in this context means an "entire claim on which relief may be granted." Id. (citation omitted).

Preliminarily, we note that since Miller, proceeding pro se, has submitted a brief containing comprehensible arguments for appeal, we will "overlook the defects" in complying with Rule 28 of the Federal Rules of Appellate Procedure "and consider the merits" of Miller's appeal. See Petnel v. American Tel. & Tel. Co., 434 F.2d 645, 646 (2d Cir. 1970).

Our standard of review is the same as that which the district court exercises over the bankruptcy court's decision: we accept the bankruptcy court's findings of fact unless clearly erroneous, and we review its legal conclusions de novo. In re Prudential Lines, Inc., 928 F.2d 565, 568 (2d Cir.), cert. denied, 502 U.S. 821 (1991).

Bankruptcy courts are courts of equity empowered to invoke equitable principles to achieve fairness and justice. In re Momentum Mfg. Corp., 25 F.3d 1132, 1136 (2d Cir. 1994). This power derives from 11 U.S.C. § 105(a), which provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

The bankruptcy court "may sift the circumstances surrounding any claim" to determine that injustice "is not accomplished in the administration of the debtor's estate, and in so doing it may adopt that remedy which it deems most appropriate under the circumstances." Momentum Mfg., 25 F.3d at 1136 (quoting In re Stirling Homex Corp., 591 F.2d 148, 155-56 (2d Cir. 1978)). We therefore review a decision to grant or deny relief pursuant to section 105(a) for abuse of discretion. Indian Motorcycle Assocs. III Ltd. Partnership v. Massachusetts Hous. Fin. Agency, 66 F.3d 1246, 1249 (1st Cir. 1995).

Miller seeks an order for abandonment of the RICO claim under 11 U.S.C. § 554, which provides as follows:

> (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
> (b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.
> . . .
> (d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

The role of a bankruptcy trustee is to liquidate the entire estate for the benefit of creditors; the trustee therefore has the discretion to abandon property to the debtor when the administration of the property would not benefit the estate.

See In re K.C. Mach. & Tool Co., 816 F.2d 238, 245-46 (6th Cir. 1987). Section 554 was enacted because Congress was concerned that some trustees were taking burdensome assets into the estate and selling them to increase their commissions, rather than to benefit the estate. Id. at 246. Bankruptcy courts were thus empowered to order the trustee to abandon property at the request of a party in interest if the property was of no benefit to the estate. Id.

Before ordering abandonment a court must find either: (1) the asset is burdensome to the estate; or (2) the asset is both of inconsequential value and inconsequential benefit to the estate. Id. at 245. On a motion for abandonment, the only issue is "whether there is a reason that the estate's interest in the property should be preserved or, instead, whether the property is so worthless" to the estate that it should be removed. Id. at 246 (citations omitted). We are mindful that "[a]n order compelling abandonment is the exception, not the rule." Id.

When the asset in question is a cause of action, a would-be plaintiff cannot bring suit until the trustee disposes of the claim. In re Ira Haupt & Co., 398 F.2d 607, 613 (2d Cir. 1968). Clearly, a trustee "may not simply do nothing and thereby permit a possibly valid claim to evaporate and a defendant to escape liability." Id. In Ira Haupt, we remarked that the public auction of a cause of action is "a seemingly unlikely" means of administration, but we also said that a court should examine the available evidence and ascertain for itself whether a claim belonging to the estate may have merit. Id. at 612. This was possible in Ira Haupt, because the plaintiff counsel had submitted copies of the complaints to the trustee alleging the specific facts and events giving rise to the various claims. Id. at 609-10.

Here, Miller has done nothing of the kind. The disclosure of information is of prime importance in a bankruptcy; the debtor must make "full and fair" disclosure throughout the proceedings of all relevant information in sufficient detail to allow interested parties to make informed judgments. Momentum Mfg., 25 F.3d at 1136. See also 11 U.S.C. § 1125(a)(1). If this cause of action is meritless — and therefore worthless — the bankruptcy court is obliged to order it abandoned to the debtor. However, the bankruptcy court is not constrained to abandon property that may have value, and it has the discretion to await the disclosures and investigations it requires to make that determination. Here, Miller commenced the RICO suit and seeks its abandonment to the debtors so that he can assert the right (on the debtors' behalf) to prosecute it. Miller is therefore presumptively in the best position to apprise the bankruptcy court as to the merits (and the value) of the claim. The bankruptcy court has found that Miller has failed to do so.

The bankruptcy court could order abandonment of the cause of action to the debtors and later reopen bankruptcy proceedings to retake it, if and when the claim proves valuable and it is discovered that Miller induced abandonment by a failure to make required disclosures that would have allowed the court to appreciate the claim's true value. See In re Forbes, 58 B.R. 706 (Bankr. S.D. Fla. 1986) (trustee may recover proceeds from settlement of claim concealed by debtor); In re Lake, 49 B.R. 715 (Bankr. S.D. Fla. 1985) (same, where debtor concealed claim with "cryptic and deceptive references" in schedule of property). By the same token, however, the bankruptcy court has discretion to deny abandonment on the ground that, by so doing, Miller ultimately may be compelled to disclose the facts that support the allegations or the lack thereof. We will not compel the bankruptcy court to rely upon Miller to

prosecute a claim of undetermined value, particularly since the bankruptcy court evidently has no faith in Miller's ability or in his reliability. That finding is supported by the bankruptcy court's long experience with Miller, and by objective facts suggesting that he has been mercurial and irresponsible in his dealings with the bankruptcy court.

Since the bankruptcy court did not abuse its discretion under section 105(a) in denying Miller's motion for abandonment of the RICO claim, we affirm the order of the district court.

s/Joseph M. McLaughlin
Honorable Joseph M. McLaughlin

s/Dennis G. Jacobs
Honorable Dennis G. Jacobs

s/Guido Calabresi
Honorable Guido Calabresi

UNITED STATES COURT OF APPEALS
Filed
JAN 23 1996
George Lange In. Clerk
SECOND CIRCUIT

Appendix 11 — Transcript of the Hearing on Appeal Before the Court of Appeals Held on January 11, 2000

(1) UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

99 Civ. 5055

IN RE: INTERPICTURES, INC.

----------x

January 11, 2000
10:45 a.m.

Before:

HON. RALPH K. WINTER, CHIEF JUDGE

HON. GUIDO CALABRESI

HON. DENNIS JACOBS

APPEARANCES

ELIEZER MILLER
Pro se

LOEB & LOEB
Attorneys for Generale Bank Nederlands, N.V.
P. GREGORY SCHWED
Of counsel

EDWARD P. FREY
Former Chapter 11 Trustee, Pro se

(2) (Case called)

CHIEF JUDGE WINTER: Yes, go ahead.

MR. MILLER: Good morning, your Honors.

CHIEF JUDGE WINTER: Good morning, Mr. Miller.

MR. MILLER: My name is Eliezer Miller. I am pro se. I come before this court this morning just to make a simple request, to invoke the holdings of this honorable court in its summary order dated January 24, 1996, In Re Interpictures, and to compel the abandonment of the estate causes of action to me as a creditor, party in interest under Section 554, subsection B of the bankruptcy code, because on March 7, 1996, I complied with the standard to compel abandonment set out in the summary order of this court by submitting a copy of the complaint to the trustee, alleging the specific facts and events giving rise to the various claims, and on May 28, 1996, the bankruptcy court conducted a hearing with the presence of the parties including the trustee and found the claims to have no value.

This court in its summary order of 1996 held if the cause of action is meritless and therefore worthless, then the bankruptcy court is obliged to order it abandoned. Thank you.

MR. SCHWED: Good morning, your Honors. May it please the court, Gregory Schwed on behalf of Generale Bank Nederlands, appellee, one of the appellees in this case.

Mr. Miller invokes the January 1996 decision of this (3) court as if he had prevailed in that decision which, of course, he did not. The holding in that case was to uphold —

JUDGE CALABRESI: But the bankruptcy court seemed to decide against Mr. Miller on the ground that it was the law of the case that he had to lose, and it is hard for me to figure out anything in our decisions which suggested that he had to lose. Those decisions said he had to meet

certain requirements. He now claims that he has met these requirements.

I would just like to know what the basis for the bankruptcy court's decision is. The district court affirms with one sentence saying "substantially for the reasons I gave before." I don't understand how that is relevant either.

MR. SCHWED: Perfectly good question, your Honor.

JUDGE CALABRESI: Thank you.

MR. SCHWED: Among other things, Judge Korman had set gate keeping requirements for Mr. Miller's prosecution of this case on behalf of the estate, first in a 1992 decision, and then again subsequently in 1995 decision. Among other things, Mr. Miller had to have counsel that was ready to prosecute the case on pain of Rule 11 sanctions experienced in RICO matters.

Not once in the last eight years has Mr. Miller met that requirement. He had a lawyer presumably draft up a draft complaint which rehashed somewhat more competently the earlier allegations, but to this day he still has not done that.

(4) CHIEF JUDGE WINTER: Well, as I understand the problem — I think I understand the problem. If this corporation were not in bankruptcy he could not bring the suit in his own name; can't put in a RICO suit in his own name as a shareholder. But I would think in the ordinary course of a bankruptcy litigation, if a claim is of no value and the trustee does not choose to pursue it, that there would be no bar to abandonment and giving a creditor the power to enforce the claim.

So the problem here is, to what extent the bankruptcy laws would permit conditions to be put on abandonment. I mean, would you have an objection to abandonment if the court imposed conditions such as he must be represented by counsel willing to obey Rule 11? He will speak to the court only through such counsel? I mean,

what argument could you make if we were to say it could be abandoned under those conditions?

MR. SCHWED: Well, your Honor, those are exactly the conditions that Judge Korman set.

CHIEF JUDGE WINTER: Well, then, what is the problem of our remand and giving him an opportunity to meet those conditions, either meet them or not? Is there any argument against our doing that? It is not entirely clear to me that Judge Korman was saying the conditions haven't been met.

MR. SCHWED: Well, your Honor, it is just that those conditions have been outstanding for nearly eight years, and (5) at some point certainly this is —

JUDGE CALABRESI: But there were a whole series of different conditions, for example, the determination of a value and so on, and as these get met, other conditions get suggested. And behind it there is a generalized suggestion that Mr. Miller is a pain and that he shouldn't get the suit because he is a pain. But that is not, as far as I know, the law, unless there are at least some pretty specific findings of improprieties or other things. And all of those seem to me to have been dismissed or not prosecuted.

MR. SCHWED: Well, there are other issues involved, too. Mr. Miller claims his right to this cause of action at one point as the creditor. I don't know why Mr. Miller as the owner of a $10,000 claim should get this rather than the bank which —

JUDGE CALABRESI: Has anyone else asked for it?

MR. SCHWED: Well, obviously the bank is not going to ask for it because they are potential defendants.

JUDGE CALABRESI: But, I mean, has anyone — in abandonment that goes back to whether the thing has value. If somebody else wants it, then there is an argument that it has value, but —

MR. SCHWED: I think the problem is this case has been pending for 14 years and has been before a number of able bankruptcy judges and District Judge Korman.

(6) CHIEF JUDGE WINTER: This is always the chance, I suppose, really until now, that the trustee would do something.

MR. SCHWED: Pardon? I'm sorry.

CHIEF JUDGE WINTER: There was always the chance, at least until now, that the trustee would do something.

MR. SCHWED: That's right. And the trustee presumably —

CHIEF JUDGE WINTER: Now the trustee won't do something. Now we know that the debtor isn't going to pursue this claim. That's a different case. You have won up until now in different circumstances, but the circumstances are different. And I don't see what the argument is, assuming that he — you know, assuming he proves his shareholding and whatever else is necessary to qualify, so long as there are conditions on the abandonment, namely, retention of counsel, and he speaks to the court only through counsel, then you have Rule 11 and everything else that protects you down there. I don't see what the argument is against abandonment in those circumstances.

MR. SCHWED: I guess the paradox is that if it is a claim with value, it should be asserted by the estate for the benefit of creditors, and if it is not, then given Mr. Miller's history of litigation abuse —

CHIEF JUDGE WINTER: That's not entirely true. There (7) are lots of claims that a trustee may say I don't want to pursue, I don't think it is worth the cost, and a creditor says I disagree, and they say okay, you bear the costs of the lawsuit and we will see where it goes.

MR. SCHWED: That's right.

CHIEF JUDGE WINTER: There is no hard and fast rule saying that if a trustee decides not to bring a claim, it can't be abandoned.

MR. SCHWED: That's correct, your Honor, but in those cases, for example, in Hira Halp there was Roseman & Colan was bringing a claim.

CHIEF JUDGE WINTER: Well, but if we get — I mean, there can even be more stringent gate keeping provisions. It can be with leave of court on some things — I mean, I am just talking about a remand for them to look at this in circumstances where we know the trustee isn't going to do anything about it and they can put whatever reasonable gate keeping provisions they deem necessary. I can understand why they might not want Mr. Miller pursuing this pro se.

All right. Why don't we hear from Mr. Frey.

MR. FREY: Good morning, judges. My name is Edward Frey. I am a former Chapter 11 trustee in this case serving from 1987 until 1988, and I am appearing pro se but I am an attorney and I am admitted to this court.

I would like to address the issue of abandonment if I (8) may. 11 U.S.C. 554 which governs abandonment is an entirely permissive statute in the hands of the judiciary. Judge Duberstein pointed out the problems that he had with Mr. Miller. Judge Conrad denied abandonment to him. That was affirmed by Judge Korman and it was affirmed by this court in a January 1996 decision.

CHIEF JUDGE WINTER: You are going over what these gentlemen went over. Why don't you respond to the issues I raised.

What are the arguments that would permit denial of abandonment where there were reasonable conditions imposed on pursuit of the claim to protect people from harassing, frivolous litigation?

MR. FREY: I don't think that is what 554 speaks to. 554 addresses the question — puts the discretion on

whether or not to permit abandonment in the bankruptcy court. It doesn't say —

JUDGE CALABRESI: Your argument is that if the bankruptcy court can, for no reason whatever, deny abandonment, it doesn't want to do it —

MR. FREY: That may be the logical consequence of what I am saying, but that's not what has happened here. This record is replete with hundreds of malfeasance acts by Mr. Miller, and all of those led the court to conclude that —

JUDGE CALABRESI: Where do we have a finding by a (9) court that abandonment is not proper in this case because of specific acts of malfeasance on the part of Mr. Miller? Where is there a finding —

MR. FREY: I would suggest that that is in the opinion of Judge Conrad in his 1994 decision. It is also in Judge Duberstein's order of recusal where he specifically found in his order that Mr. Miller had placed every road-block possible to a judicious conclusion —

CHIEF JUDGE WINTER: But, Mr. Frey, one of the conditions I mentioned that I think ought to be imposed is that Mr. Miller, in pursuing this claim, not be allowed to submit pro se papers, that every paper, every motion, everything in step has to be signed by counsel.

MR. FREY: Judge, I would submit in answer to that that in theory it sounds fine. Certainly I don't think anybody could object to it.

The 15-year history of this case indicates otherwise. I have absolutely no confidence in saying to you from the real world, because I have been in these trenches for 15 years at great personal expense, that Mr. Miller would follow the directions of any counsel, and that what you would have —

JUDGE CALABRESI: But if his counsel has to sign papers and the counsel is himself, herself, subject to Rule 11 sanctions if Mr. Miller is not following those instructions, counsel shouldn't sign the papers.

(10) MR. FREY: And then counsel doesn't sign the papers.

JUDGE CALABRESI: Then the papers are not accepted.

MR. FREY: Then Mr. Miller comes back here pro se.

CHIEF JUDGE WINTER: No.

MR. FREY: Where does it end?

CHIEF JUDGE WINTER: The condition would be that he can't go pro se. I mean, I understand your situation. We have a situation in Connecticut involving Mr. Martin-Trigona, the company is bankrupt and suing the trustee and counsel for the trustee and everything —

MR. FREY: Yes, sir.

CHIEF JUDGE WINTER: I am talking about really tough conditions under bringing a suit. I might even let the district court impose a condition of a bond to respond to sanctions that are awarded.

MR. FREY: I'm sorry, Judge, I didn't hear what you said just now.

CHIEF JUDGE WINTER: I think we even ought to look at or allow the district court to look at as one of the conditions the posting of a bond before the case is brought that would be used to secure any sanctions ultimately levied against counsel or Mr. Miller. Maybe I am naive, but I do believe there are ways of controlling these suits. I mean, we ultimately stopped Mr. Martin-Trigona by forcing him to get leave of court before he could —

(11) MR. FREY: Judge, I do not believe you are naive and I would never even suggest that. If my prior remarks indicated that, I apologize.

CHIEF JUDGE WINTER: It honestly wasn't a reflection on anything you said. I worry about being naive.

JUDGE CALABRESI: So do I.

MR. FREY: The 15-year track record here is, with all respect —

CHIEF JUDGE WINTER: Obviously this court is only one third not naive.

MR. FREY: Yes, I noticed that.

The 15-year track record here is that, in one form or another, is not going to happen, that we are going to keep coming back here. I have reached an age of senescence that I didn't enjoy before this started.

JUDGE JACOBS: Mr. Frey, your expenses associated with all this litigation, they are borne personally by you, they are not charged back to the estate?

MR. FREY: No, sir.

JUDGE JACOBS: They can't be —

MR. FREY: No, sir, I did — when I concluded my office as Chapter 11 trustee, in connection with my final report, I did submit an application for compensation.

JUDGE JACOBS: Yes.

MR. FREY: And Judge Duberstein, because of the size (12) of the estate, awarded me $5,000, which I have yet to see. My other expenses are in excess of $75,000.

JUDGE JACOBS: Quite frankly, and as a matter of law, if a RICO litigation proceeded against you, prior to the claim being abandoned by the estate, and the estate had not yet been closed or settled, would you not be able to charge back against the solvent estate the costs of defending yourself?

MR. FREY: I don't think so. Maybe I could, but I will assure you that there wouldn't be a third of what would be required to compensate me in that case.

JUDGE JACOBS: But there could be some charge back.

MR. FREY: There might be. I suppose that would be left to the discretion of the court, and it would depend, I suppose, further on what basis I was exonerated. But I don't think that I would have carte blanche to go back to the court and ask —

JUDGE JACOBS: I didn't say carte blanche. I am looking for what the interests would be of the bankruptcy court in not abandoning a thing that is found to be without value, and if there are costs that an estate in bankruptcy could suffer as a result of frivolous litigation, then one might be inclined to read the statute to allow the bankruptcy court to refuse to abandon something even if it is completely valueless because there is potential —

MR. FREY: I think that that is probably the nub of (13) the argument here. I didn't want to make a personal argument, but there are people here including myself who have been put to geat personal expense as a result of this. At one point I was represented by Patterson, Belknap and I incurred fees to them I believe in excess of $65,000 in defending myself. There is no likelihood anywhere or any time that I am going to get that money back.

JUDGE CALABRESI: It is always the case when somebody is the subject of a potentially frivolous suit.

MR. FREY: I understand that. But I think, in answer to the judge's question, I think that what runs through the mind of the bankruptcy court, as far as I am in a position to know what runs through their minds, is not only that Mr. Miller has failed to comply with any reasonable degree of control that the courts have attempted to exercise, with all respect to the chief judge, the cost to the people of defending this frivolous suit in terms of our own personal situations is really astronomical.

And the bankruptcy court sitting as a court of equity has the inherent right to mold its decrees to do that. And under 554, when it says that unless the court otherwise directs, the property will be abandoned, there is nothing in 554 that says it must be abandoned. It says unless the court otherwise directs. And the court, cognizant of what we have all been put through here, I think they say it, but I think (14) that that's inherent in the conclusions that they reach.

JUDGE CALABRESI: In any event, the decision of the court below, the bankruptcy court was based on what they took to be the law of the case, so that it is hard to say that there is a clear holding by the bankruptcy court that it was exercising its discretion not to abandon rather than feeling it was bound by our decision to abandon —

MR. FREY: Excuse me, but, yes, I think that is probably what Judge Bernstein had in mind primarily. But I would also say to you in response to that that in that connection, we had that entire record before him. He had the records of all of the proceedings before Judge Duberstein, he had the records of all the proceedings before Judge Conrad, all the records before Judge —

JUDGE CALABRESI: At least we have a right to expect as a Court of Appeals that the bankruptcy court say I am exercising my discretion which I claim exists under 554 not to abandon rather than say I am not abandoning because I have been told not to abandon by the Court of Appeals when in fact the Court of Appeals hasn't said that.

MR. FREY: I think as a matter of first impression that would be right, I certainly couldn't argue with that. But it is not a matter of first impression. Judge Conrad does make that determination, that under the circumstances it will be inappropriate to abandon to Mr. Miller —

(15) JUDGE CALABRESI: Under the conditions at that time. At that time it was not yet demonstrated that the suit had no value.

MR. FREY: Well, I think there is more to it —

JUDGE CALABRESI: There clearly is behind the whole thing this feeling about Mr. Miller, and that my problem is that I don't see either a clear holding on the part of the bankruptcy court that this suit should not be abandoned to Mr. Miller because he has behaved in ways which cannot be controlled through the sort of instruments that the chief judge, presiding judge has suggested, or a deci-

sion that we are simply exercising our general equitable jurisdiction not to.

Each time a reason was given which then seemingly was met. This time a reason was given which is patently not so, that they were compelled by the law of the case. The least we can ask for is that a reason be given which is a valid reason which we then can test on appeal.

MR. FREY: I don't want to be difficult or disrespectful, but I don't believe that you can read that into 554. If that direction is lodged with the bankruptcy judge and he endorses what prior bankruptcy judges have said based on the record in front of him, how can he be in the position to make a de novo decision that everybody else was wrong?

What else has happened here, a complaint was (16) submitted that wasn't signed by counsel, it was a draft, nobody has ever said there was anything to it. As Mr. Schwed properly said, eight years went by. How much time do you have to do this? I think it is all very well and good to say that these things have got to be examined and, yes, you are entitled to a fresh impression from the sitting bankruptcy judge. But how long is this permitted to go on? This is a court of equity.

CHIEF JUDGE WINTER: Thank you.

MR. FREY: Thank you, Judge.

MR. MILLER: Your Honor, I believe I am compelled to answer. Mr. Frey is trying to the turn tables around. It is 15 years for him, it is 15 years for me, the same time. He claims to prove to the court that there is nothing to this, I am all frivolous, because look what happened, it took such a long time.

Your Honor, I think I have everything clearly in my papers and in the history of this case that shows to the contrary. The fact of the case shows is undisputable, which is in Judge Duberstein's papers, that it was Judge Duberstein who reported the affidavit subsequent to Mr. Frey's disclosure statement when he resigned after being

accused of bankruptcy fraud violating criminal code, Title 18, various sections including perjury and for hiding assets, undisclosure of assets, and taking assets beyond the reach of the creditors of (17) $12 million which was in the estate which he took over March 24, 1987, disappeared during the administration.

And I made motions and I asked for — I obtained from the bankruptcy clerk numerous, numerous subpoenas from all judges, Judge Parente, Judge Holland, Judge Duberstein, and Judge Conrad. They are all quashed sua sponte. That's what the record shows. I was trying to get one day in court to save them the expenses that they claim they have to expend. I don't have to expend? Time is not money? What did they expend? Lawyers. We begged them 12 years ago, if you think it is so frivolous, go into the district court and ask for summary judgment, ask for frivolous sanctions, you will get it. Why do you wait 12 years?

CHIEF JUDGE CALABRESI: You are at a microphone, please don't shout.

MR. MILLER: I am sorry, your Honor. I really don't even want to put this on the record, what it says in my papers. There is more underneath the table than they are talking and I think we all know about it after all this. What I really want is to prosecute RICO — as your Honor stated in the order of 1996, that in the event that the prosecution is going to be successful, you suggested for Judge Conrad to give me without — why? Because if it is successful, it has value and it has merit, and if the only reason why it is successful is going to be because Miller failed to disclose the required (18) disclosures which he was supposed to disclose when he was debtor in possession or when — then there will be the motion to reopen the bankruptcy case retained for the benefit of the creditors. That's what your Honor and judges wrote, two of you in that decision.

Now, at this point, bringing up an issue about counsel, I have the finest counsel you could ask for. As a matter of fact, I suggest to the court, you tell me who the counsel is because I went to — would you believe me — over a hundred law firms in the City of New York. They read the cases. They spent their time in the case. They don't believe this case. Each wanted to take it, but, Miller, we ain't going to bankruptcy court for you.

Now, they are afraid I am frivolous —

CHIEF JUDGE WINTER: I'm sorry, you took this to a hundred law firms and they wouldn't take the case?

MR. MILLER: I visited over a hundred law firms. I can probably submit a list of the law firms and names of the people with the dates that I visited.

CHIEF JUDGE WINTER: And they wouldn't take the case?

MR. MILLER: No, they would gladly take the case. I could name them off to you. Hill Betts & Nash were retained by me to take the case, specifically special counsel to prosecute the RICO, and Judge Conrad denied them — was reversed by Judge Korman too late —

(19) JUDGE JACOBS: Just a second. Are you saying that those law firms would not represent you in the bankruptcy court?

MR. MILLER: Right.

JUDGE JACOBS: But they would represent you —

MR. MILLER: They said give me the abandonment order, we represent you in the district court, they feel there is a lot of money here.

JUDGE CALABRESI: You are saying that if the suit were abandoned to you —

MR. MILLER: To me personally as a creditor.

JUDGE CALABRESI: — you would have no problem getting counsel?

MR. MILLER: Absolutely, your Honor. As a matter of fact, I probably have two, three counsels fighting who is going to take this case.

JUDGE CALABRESI: One is enough.

MR. MILLER: One is enough. Thank you. When I say counsel, I want to repeat myself, as Judge Korman wrote in his order, equal competent counsel to represent me for Judge Korman, on my appeal Judge Korman wrote that he will — on the condition that if I had this RICO, I would prosecute it on the condition that I retain equal competent counsel, whatever your Honors choose to state as equal competent counsel I shall retain.

(20) CHIEF JUDGE WINTER: Thank you.

MR. MILLER: Thank you.

(Proceeding adjourned)

Appendix 12 — Miller's Letter Dated December 10, 1986, to the Interim Chapter 7 Trustee, Alleging That Loeb & Loeb Filed a False Petition in Bankruptcy.

Eliezer Miller
560 East 9th Street
Brooklyn, New York
(718) 435-2838

December 10, 1986

Ronald Lipshie, Esq.
2270 Grand Avenue
Baldwin, New York 11510

RE: Case No. 886 61827-18
Debtor: Interpictures Inc.

Dear Mr. Lipshie:

It has come to my attention that Interpictures, Inc. is the subject of an involuntary bankruptcy proceeding brought on by alleged creditors and you have been appointed interim trustee by the Honorable Albert Parente. Since I do not believe that the bankruptcy petition has been brought on in good faith and that there is an attempted fraud that is being perpetrated, I bring the following items to your attention.

1. There is presently pending an action in Supreme Court, New York County by me and Royal Class Securities, Inc., of which I am chief stockholder, against Interpictures, Inc., its subsidiaries and its officers and directors. I am therefore attaching a copy of the Summons and Complaint to indicate to you the various allegations and annexed thereto are exhibits supporting my claims.

2. I am annexing my Reply Affidavit in an application made in the Supreme Court together with exhibits which sets forth the chronology of events and the continuous pattern of fraud practiced by the proposed debtor and prospective subject of bankruptcy.

3. In the amended verified Answer, the debtor alleges having received the sum of $1,000,000. from Credit Lyonnaise which is one of the three petitioners for its bankruptcy. In paragraph 57th of the Answer, Interpictures Inc. was a Delaware corporation which had received a line of credit. In paragraph 52nd, the Delaware corporation admits changing its name to Interpictures Licensing Corporation as of October 9, 1985. Beyond question, it is Interpictures, Inc., the Delaware corporation, which received the monies from Credit Lyonnaise and that Delaware corporation is presently known as Interpictures Licensing Corporation. Interpictures, Inc., a New York Corporation, received no monies from Credit Lyonnaise and does not owe any money to Credit Lyonnaise. In an attempt to defeat my very substantial shareholder interest, paragraph 8A of the petition perjuriously alleges that Credit Lyonnaise lent Interpictures, Inc. a New York publicly held corporation $1,300,000. If there is an attempt to declare a bankruptcy because of any default, it should be upon the Delaware corporation which borrowed the monies and not the New York corporation. The fraud is facilitated by the fact that Interpictures Inc. a Delaware corporation which at one time existed and borrowed the monies, no longer exists but has changed its name into Interpictures Licensing Corporation. Interpictures, Inc., the New York corporation is not the debtor of Credit Lyonnaise but there is an attempt to dissolve Interpictures Inc., the New York corporation in order to wipe out my stockholder interest as well as the stockholder interests of 240 additional stockholders.

4. Mr. Silverstein is a long time friend and business associate of Alex Massis, the principal of Interpictures, Inc., the New York Corporation. In July of 1984, Mr. Silverstein appraised the value of the library of Interpictures Inc., at $6,600,000. I annex that evaluation.

5. I annex a News Release, dated March 18, 1986, wherein on page 2 Interpictures Licensing Corporation, which is a subsidiary of Interpictures, Inc. the New York corporation, values its library at $10,000,000. Yet, Mr. Silverstein, who claims to be owed the sum of $15,000., does not sue for an alleged breach of contract because presumably an inventory of $10,000,000. can cover a $15,000. debt but petitions for the bankruptcy of his long time friend and business associate. Upon investigation, I believe it will be shown that the debt of $15,000. was recently contracted.

6. The other petitioner, Leonard Gruenberg, President of Great Owl Corporation, who is similarly a long time friend and business associate of Silverstein and Massis, joins in the petition alleging a $7000. debt in order to comply with the statute which requires three creditors.

7. On June 3, 1986 a member of the Board of Directors of Interpictures Inc. submitted a sworn affidavit to the Supreme Court, New York County alleging a scheme on the part of Interpictures Inc. "to divert corporate assets and to create a shell out of the defendant Interpictures, Inc.".

8. Annexed is a letter, dated May 23, 1986 by Sidney Greenwald, the same Director of Interpictures, Inc.

9. Similarly annexed is a letter, dated October 21, 1986 by Dr. Greenwald to the Board of Directors of Interpictures, Inc.

10. A proxy was mailed by Interpictures, Inc. calling for a meeting on June 2, 1986. That notice is attached and page 2 of the proxy speaks of the company "rapidly expanding" and the optimistic financial future. Immediately upon my action being instituted, another meeting was called for June 5, 1986 wherein suddenly the company began to experience "serious financial problems". In order to circumvent the lawsuit served by me on May 30, 1986, Interpictures Inc. was suddenly confronted with alleged severe financial crisis.

11. I am annexing news releases, dated May 28, 1986 from a magazine called Screen International indicating that a subsidiary wholly owned by Interpictures Inc. was involved in a $12,000,000. business deal and was according to the CEO, facing a robust future of sales between $6,000,000 - $8,000,000 and possibly as high as $26,000,000.

12. Annexed is a statement of the company's CPA showing that on June 30, 1985, Interpictures Inc. had a net loss of $988,368.35 at a time when Credit Lyonnaise was nonetheless willing to lend it $1,300,000. One year later, the subsidiary Interpictures Licensing Corp. showed a net income profit of $509,730. With a gross profit of $1,944,017. I am annexing the earlier report of Donald L. Bunsis showing the loss as of June 1985 and the report of Goldburd Gutkind and Company showing the financial reversal and the substantial profit. Yet, the bank is a petitioner for the debtor's bankruptcy. This bank has resisted disclosure in the Supreme Court action, New York County and I attach a copy of a subpoena *duces tecum* and two letters which went to Credit Lyonnaise because it was suspected that the bank was in collusion with Interpictures, Inc. in an action brought against the proposed debtor.

13. In an affidavit sworn to June 11, 1986, Alex Massis informed the Supreme Court, New York County that the value of the inventory of Interpictures Inc. was $30,000,000.

Interpictures Inc. is the subject of a lawsuit as well as its subsidiaries and its officers and directors for damages approximating $40,000,000. It is also attempting to evade contracts lawfully entered into and which are annexed to the Summons and Complaint. Its declaration as a bankrupt will absolve it of any and all responsibility to me as well as to the other shareholders while it will continue to do business both domestically and abroad through its anticipated disguised forms. At the very outset of the litigation, Interpictures Inc. informed Justice McCooe of the Supreme Court, New York County that it had entered into a contract for the sale of its assets and for the purposes of being acquired by KJI, Inc., a domestic corporation. Subsequent investigation confirmed that no such corporation was formed, no contract was ever entered into and that a fraud was being perpetrated upon the Supreme Court. I am annexing a copy of a letter written by my attorney, dated June 12, 1986 to the Supreme Court. On June 13, 1986 the proposed debtor conceded the non-existence of the corporation or the buyer and the alleged purchase was suddenly terminated. Both letters are annexed as exhibits.

It is quite obvious that there has been a pattern of fraud, perjury, contrivance and fabrication. I believe that upon inquiry, this involuntary bankruptcy is part of that pattern.

Very truly yours,
s/Eliezer Miller
Eliezer Miller

cc: Honorable C. Albert Parente

Appendix 13 — United Stated District Court Order Dated May 11, 1988, Reversing Bankruptcy Judge Holland's Decision and Removing Him from this Case.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
_____X

In Re:

INTERPICTURES, INC. ORDER
INTERPICTURES RELEASING CORP. 88 CV 1217(ERK)
INTERPICTURES LICENSING CORP.

Debtors.
_____X

Korman, J.

The March 22, 1988 decision of Judge Holland is reversed and remanded. The Bankruptcy Judge is directed on remand to determine whether the appellant, Eliezer Miller, is an equity shareholder with standing to participate in these bankruptcy proceedings pursuant to 11 U.S.C. §1109(b) (1982).

Upon remand, the Chief Bankruptcy Judge is directed to assign another Bankruptcy Judge to hear the case.

SO ORDERED:

s/Edward R. Korman
Edward R. Korman, U.S.D.J.

Dated: Brooklyn, New York
May 11, 1988

Appendix 14 — Judge Korman's Order That Reversed (2) Two Bankruptcy Court Orders and Vacated Citation for Contempt Against Miller.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
_____X
IN RE:

INTERPICTURES, INC., ET AL., ORDER
90 CV 1940(ERK)

Debtors.
_____X

KORMAN, J.

Eliezer Miller appeals from two orders dated October 25, 1990. The first order found Mr. Miller to be in contempt for failing to appear at various hearings in violation of express orders to appear. A prior order of August 6, 1990 suggests that the contempt citation of October 25, 1990, was based on the failure of Eliezer Miller to obey three orders to appear at hearings on March 7, 1990, April 16, 1990, and June 28, 1990.

A review of those orders indicates that Mr. Miller did not disobey an explicit order that he personally appear. Specifically, on February 26, 1990, Judge Conrad directed "[t]he debtors" to appear on March 7, 1990. This was not an order directed personally to Eliezer Miller. Similarly, on April 16, 1990, Judge Conrad simply set April 16, 1990, as the date for the argument of an order to show cause presented by Mr. Miller. There was no order directed Mr. Miller to appear on April 16, 1990. The same is true of that order dated May 14, 1990, which merely directed Mr. Miller to show cause why sanctions should not be assessed

pursuant to Rule 9011. The failure to appear at the proceedings at most warranted sanctions pursuant to Rule 9011.

Because Mr. Miller did not disobey any order of Judge Conrad that he appear personally on March 7, 1990, April 26, 1990, or June 28, 1990, the order of October 25, 1990 is reversed and the contempt citation is vacated.

I also reverse the second order of the Bankruptcy Court that is the subject of this appeal. Mr. Miller argues that the order duplicated at least in part a prior order entered on June 15, 1990, that I had reversed. Mr. Miller's argument appears to have merit and the parties defending the order have failed to address this argument despite my request that they do so.

SO ORDERED

s/Edward R. Korman
Edward R. Korman
United States District Judge

Dated: Brooklyn, New York
July 26, 1993

Appendix 15 — Miller's Counsel, Snitow & Pauley Filed an Application on March 7, 1996, for Permission to Prosecute the Rico for the Benefit of the Bankrupt Estate.

LAW OFFICES OF
SNITOW & PAULEY
345 Madison Avenue
New York, New York 10017-3707

Telephone (212) 599-4500

March 7, 1996

BY HAND

Hon. Edward R. Korman
United States District Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: In re Interpictures, Inc.
Case No. 886-61827-346 (E.D.N.Y. Bankr. Ct.)
Case No. 886-62117-346 (E.D.N.Y. Bankr. Ct.)
Case No. 886-62079-346 (E.D.N.Y. Bankr. Ct.)

Dear Judge Korman:

At the request of Mr. Eliezer Miller, and pursuant to your Honor's order dated April 11, 1995, I reviewed the Interpictures, Inc. bankruptcy matter. Based on that review, my firm prepared a draft complaint for the benefit of the Interpictures' bankruptcy estate. A copy of the draft complaint is enclosed.

Mr. Miller is determined to press the claims to trial and has informed me that he will retain reputable counsel acceptable to the Court to pursue these claims.

Respectfully submitted,

SNITOW & PAULEY

s/Franklyn H. Snitow
Franklyn H. Snitow
(FHS-7414)

Encl.
cc: Jeffrey L. Sapir, Esq.
Matthew King, Esq.
Michael P. Zweig, Esq.
Justin Manus, Esq.
Mr. Alex Massis
(All by mail; w/encl.)

Appendix 16 — Judge Korman's Order Dated September 27, 1996, (i) Removing Bankruptcy Judge Conrad from Miller's Motion and (ii) Directing That the New Judge Determine Whether Miller Met the Standard for Abandonment as Set out in the Order of the Court of Appeals Dated January 24, 1996.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
_____X
IN RE:
INTERPICTURES, INC. ET AL.,

Plaintiffs,

-against- ORDER
87 CV 4211 (ERK)

LEE STEINER, ET AL.,

Defendants.
_____X

KORMAN, J.

Eliezer Miller has filed yet another application dated September 18, 1996, seeking to have the RICO causes of action in the above-captioned case abandoned to him. The filing of this motion here is improper because the case was dismissed and has long since been closed.

This motion should have been filed with the Clerk of the Bankruptcy Court. Accordingly, I am referring the motion to the Clerk of the Bankruptcy Court with a direction that it be assigned to a judge other than Judge Conrad. While Judge Conrad is an exceedingly able judge who has patiently dealt with a difficult *pro se* litigant, he

has indicated repeatedly, and contrary to my prior ruling and that of the Court of Appeals, that the RICO causes of action may not be abandoned, even if Mr. Miller's request could otherwise be granted, because this "asset" was "administered" when an auction was held at which there were no bidders.

I see no point in referring this application to Judge Conrad again. In directing that the motion be reassigned I do not suggest that it must be granted. On the contrary, denial may be warranted if Mr. Miller has not complied with the standard set out in the Summary Order of the Court of Appeals dated January 24, 1996, pp. 6-7, or for any other valid reason the parties may advance.

SO ORDERED:

s/Edward R. Korman
EDWARD R. KORMAN
UNITED STATES DISTRICT JUDGE

Dated: Brooklyn, New York
September 27, 1996

Appendix 17 — Judge Conrad's Order Dated November 13, 1996 That He Resign From This Case.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

_____X

In Re:

INTERPICTURES, INC., ET AL., Bankruptcy No. 186-11827-346 Chapter 7

Debtor.

_____X

INTERPICTURES, INC., ET AL.,

Plaintiffs,

-against- District Court No. 87 CV 4211 (ERK) 87-00025

LEE STEINER, ET AL.,

Defendants.

_____X

Re: Order of Honorable Edward R. Korman, USDJ, dated September 27, 1996

ORDER

Whereas, the Honorable Edward R. Korman having referred the motion to the Clerk of the Bankruptcy Court with a direction that it be assigned to a judge other than the undersigned, it is hereby

ORDERED, that this case be and is hereby referred to the Clerk of the Court for reassignment to another Bankruptcy Judge in this district.

Dated: Westbury, New York
November 13, 1996

s/Francis G. Conrad
Hon. Francis G. Conrad
United States Bankruptcy Judge

Appendix 18 — Chief Bankruptcy Judge Duberstein Order Dated November 14, 1996, Assigning this Case to Judge Stan Bernstein.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In Re:	Bankruptcy No.
	186-11827-346
INTERPICTURES, INC., ET AL.,	186-12079-260
	186-12117-260
	Chapter 7
Debtor.	

INTERPICTURES, INC., ET AL.,

Plaintiffs,

-against-	District Court No. 87 CV 4211 (ERK)
LEE STEINER, ET AL.,	Adversary Proceeding No. 87-0025-346 88-0268-346
Defendants.	

Re: Order of Honorable Francis G. Conrad, USBJ, dated November 13, 1996

ORDER

Whereas, the Honorable Francis G. Conrad having referred this matter to the Clerk of the Court for reassignment to another Bankruptcy Judge in this district, it is hereby

ORDERED, that this case be and is hereby assigned to Bankruptcy Judge Stan B. Bernstein, and it is further

ORDERED, that the case number assigned to this case be modified to reflect the reassignment of this case, and it is further

ORDERED, that the Clerk of the Court take all of the necessary steps to effectuate the transfer of this case and notify the debtor, US Trustee, creditors and all other parties-in-interest of this reassignment.

Dated: Brooklyn, New York
November 14, 1996

s/Conrad B. Duberstein
Conrad B. Duberstein, Chief
United States Bankruptcy Judge